

STATE OF NEW YORK : NASSAU COUNTY

SUPREME COURT : PART 39

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Ind. No. 202N-11

ULISES BONILLA,

Defendant.

-----X

JURY TRIAL

December 12, 2011
262 Old Country Road
Mineola, New York

B E F O R E :

HON. GEORGE R. PECK,
Acting Supreme Court Justice

A P P E A R A N C E S :

HON. KATHLEEN M. RICE
Nassau County District Attorney
BY: ZEENA ABDI, ESQ., of Counsel
Assistant District Attorney
For the People

DANIEL L. MILLMAN, ESQ.
316A Main Street
Roslyn, New York 11576
For the Defendant

JOANNE HORROCKS, CSR
Senior Court Reporter

1 THE CLERK: Case on trial, People of the
2 State of New York versus Ulises Bonilla, Indictment
3 202N of 2011. Let the record reflect all parties are
4 present, including the defendant and the Spanish
5 interpreter, Kimberly Hernandez. There are no jurors
6 present at this time.

7 Are there any applications?

8 THE COURT: Yes, at this particular time, the
9 record should reflect that references have been made
10 throughout this trial to an individual by the name of
11 Misael Berrios, M-I-S-A-E-L B-E-R-R-I-O-S. It is the
12 position of the People that during the altercation
13 between the defendant and the deceased that this
14 individual fired a weapon in the air to ensure that an
15 altercation between the deceased and the defendant was
16 a one-on-one confrontation. Obviously if this is true,
17 the actions of the witness would be criminal, and as a
18 consequence, he could lawfully plead the fifth
19 amendment.

20 At this particular time the People have told
21 me they are going to offer him immunity pursuant to
22 Article 50 of the Criminal Procedure Law, and this
23 should be done before the Court alone before the jury
24 comes out, and then that fact can be made known to the
25 jury either on direct or on cross-examination.

1 Are we all set to proceed in this action?

2 MS. ABDI: Judge, I would just like to with
3 respect to what your Honor has just mentioned, I had
4 written a paragraph covering what we had spoken about.
5 I had given a copy of that immunity to defense counsel
6 this morning, something I had discussed with him
7 earlier. But I would just like to read that into the
8 record. I have also given copy to the Court.

9 THE COURT: If you would like to read into
10 the record, fine.

11 MS. ABDI: Thank you, Judge. People -- with
12 respect to People versus Misael Berrios, on October
13 13th, 2010, Misael Berrios was interviewed by members
14 of the Nassau County Police Department as part -- as
15 part of the investigation into the death of Armando
16 Villatoro which occurred on September 28th, 2010 in the
17 vicinity of 180 Kinkel Street, Westbury, Nassau County,
18 New York. During the interview, Misael Berrios stated
19 that he fired a handgun into the air and told people at
20 the scene to keep out of the fight between Armando
21 Villatoro and Ulises Bonilla. Mr. Berrios' intention
22 was that it was to be a fair one-on-one fight between
23 Mr. Villatoro and Mr. Bonilla. Misael Berrios has
24 agreed to testify truthfully at the trial of Ulises
25 Bonilla in exchange for a grant of immunity with

1 respect to his actions as described by him in his
2 October 13th, 2010 statement to the police.

3 This statement is signed by Misael Berrios,
4 and it's also signed by myself, Zeena Abdi, and dated
5 December 9th, 2011. And I have given defense counsel a
6 copy of that document.

7 THE COURT: All right, let's bring in the
8 proposed witness.

9 MR. MILLMAN: Before we do, your Honor, I did
10 want to also --

11 THE COURT: Just one second.

12 MR. MILLMAN: Your Honor, with respect to
13 what took place on the record, a discussion that we had
14 with the Assistant DA and your Honor concerning the
15 problem that arose with respect to one of the witnesses
16 I intend to call on behalf of the defendant, Diana
17 Bonilla, your Honor has just signed a subpoena which I
18 intend to have served on her as soon as possible,
19 immediately.

20 But as I indicated to your Honor, she has
21 advised that it is her intention to not respond to any
22 subpoena and not to appear in court. So while I will
23 follow the procedures necessary, I will be requesting a
24 material witness order through her. I am not asking
25 for a decision on that. I have to submit that through

1 writing. But I want to put on the record I have
2 advised the Court of this and that we had a discussion
3 about that.

4 THE COURT: All right, now, it's your
5 position that she would provide alibi testimony to the
6 defendant with regard to the incident in the woman's
7 bathroom?

8 MR. MILLMAN: Yes, and there's also
9 additional relevance to her testimony because she
10 observes my client in the back seat of the vehicle, the
11 Acura that's been the subject of much questioning that
12 was seen leaving the scene of the incident. She
13 observes my client in the back seat of that vehicle
14 right before he went to the hospital as he was bleeding
15 from his hand which obviously is quite relevant because
16 it goes to why his bloods there. I know the Assistant
17 DA has their position.

18 THE COURT: I have never witnessed in my
19 experience a material witness order being sought for by
20 the defense. This is the first for me.

21 MR. MILLMAN: Certainly for me, your Honor.

22 THE COURT: Obviously when I was a
23 prosecutor, I used to secure them from time to time,
24 and the police department would effectuate those
25 orders.

1 Now, the statute specifically says that the
2 People or the defendant can seek a material witness
3 order. And if I do sign that, a police officer,
4 according to the statute, must execute, because the
5 order gives the police officer the right to effect the
6 arrest.

7 Now, we just had an off-the-record discussion
8 with Detective Cereghino, the investigating detective
9 on this particular case, and he informed us that other
10 members of the Homicide Squad would attempt to execute
11 this order if signed. In my experience, counsel, if
12 you want something done thoroughly, the Homicide Squad
13 is the one to do it. So hopefully it didn't come to
14 pass, but that's the discussions on it.

15 MR. MILLMAN: And just one more thing I would
16 just ask to approach about that concerning the other
17 matter we discussed, and it will be very briefly, your
18 Honor. I think it would be best if we approached on it
19 if we could. It is no not related to this issue of
20 Miss Bonilla but related to another issue we had just
21 discussed.

22 THE COURT: I forgot.

23 MR. MILLMAN: Mr. Berrios, that issue. I did
24 want to approach on that briefly.

25 THE COURT: Okay.

Proceedings

921

1 (A discussion was held off the record at the
2 bench.)

3 (Whereupon, Misael Berrios entered the
4 courtroom.)

5 THE COURT: Mr. Berrios, sit down, please.
6 We have heard evidence in this particular case that you
7 fired a shot when the deceased and the defendant were
8 in an altercation. That is a criminal action depending
9 upon your criminal intent at the time. The culpability
10 remains to be seen. I don't know whether or not your
11 conduct was limited to just firing a shot or was
12 expanded to actually helping in a serious assault or
13 homicide.

14 The District Attorney has offered to give you
15 immunity. This is not a grand jury proceeding, and it
16 is the Court who will ultimately decide whether or not
17 you are to receive immunity. If you are going to
18 receive immunity, then you simply can't plead the fifth
19 amendment; do you understand that?

20 MR. BERRIOS: Yes.

21 THE COURT: Why don't you look it over. Have
22 you entered into some agreement that was placed on the
23 record before he came into court?

24 MS. ABDI: Yes. Mr. Berrios, you executed a
25 document with respect to the discussion about your

1 actions on September 28th of 2010 and our discussions
2 with respect to that the People will grant you immunity
3 for truthful testimony in this case; is that correct?

4 THE COURT: The People don't grant immunity.
5 It is the Court that grants immunity upon the
6 recommendation of the People unless it's a grand jury
7 situation.

8 MS. ABDI: Well, with respect to that,
9 Mr. Berrios, I'd like to ask did you execute an
10 agreement with our office?

11 MR. BERRIOS: Yes.

12 MS. ABDI: I would just like to ask this, I
13 guess, be marked and shown to the witness.

14 THE COURT: That's Court Exhibit 4. Just let
15 me have it. All right, is this the agreement that you
16 entered into with the District Attorney?

17 MR. BERRIOS: Yes.

18 THE COURT: All right, now it's received in
19 evidence as Court Exhibit 4. It will not be able to be
20 shown to the jury at this particular time, but at a
21 future time, it very well might be.

22 Okay, are you making an application to me,
23 People, pursuant to Article 50 of the Criminal
24 Procedure Law, specifically that article as well as the
25 specifics of Section 50.30 of the Criminal Procedure

M. Berrios - People - Direct

923

1 Law?

2 MS. ABDI: Yes.

3 THE COURT: That's granted. Bring in the
4 jury. While the jury isn't here, come up here.

5 (A discussion was held off the record at the
6 bench.)

7 COURT OFFICER: Jury entering.

8 (The jury enters the courtroom.)

9 THE CLERK: Let the record reflect the
10 presence of the jury. Both sides consent to the
11 seating and waive a reading of the roll?

12 MS. ABDI: Yes.

13 MR. MILLMAN: Yes.

14 THE COURT: Just call the witness. I know
15 he's sitting in the box, but call the witness.

16 MS. ABDI: The People call Misael Berrios.

17 THE COURT: Please raise your right hand.

18 THE CLERK: Please rise, sir, please raise
19 your right hand.

20 M I S A E L B E R R I O S, a witness called on behalf of
21 the People, after having been first duly sworn by the
22 Clerk of the Court, was examined and testified upon his
23 oath as follows:

24 THE CLERK: In a loud, clear voice, please
25 state your name and spell your last name.

M. Berrios - People - Direct

924

1 THE WITNESS: My name is Misael Berrios,
2 B-E--R-R-I-O-S.

3 THE CLERK: And your county of residence?

4 THE WITNESS: 915 Railroad Avenue.

5 THE CLERK: Just your --

6 THE WITNESS: Westbury.

7 THE CLERK: Just your county.

8 THE WITNESS: Nassau.

9 THE COURT: Ladies and gentlemen, before we
10 start, I have every expectation that the People will
11 finish their case today. And again, you may not
12 realize it, we have gone at a much quicker pace than I
13 anticipated, and sometimes you simply can't shift gears
14 in the time allotted. The upshot of it is there is
15 every likelihood that the defendant will start his case
16 if he has one on Wednesday, not tomorrow, and then you
17 have the day off tomorrow. But I'll tell you more
18 later on that subject. Proceed.

19 MS. ABDI: Thank you, your Honor.

20 DIRECT EXAMINATION

21 BY MS. ABDI:

22 Q. Good morning, Mr. Berrios.

23 A. Good morning.

24 Q. How old are you?

25 A. Twenty-five.

M. Berrios - People - Direct

925

1 Q. And you live in Westbury; is that correct?

2 A. Yes.

3 Q. Do you have any children?

4 A. I got three.

5 Q. Now, do you know an individual named Ulises
6 Bonilla?

7 A. Yes.

8 Q. And how long have you known Ulises Bonilla?

9 A. During our whole school career.

10 Q. You went to school with him?

11 A. Yes.

12 Q. When did you first meet him? What grade are we
13 talking about?

14 A. You could say like in middle school.

15 Q. I didn't hear.

16 A. Like in middle school, seventh, eighth.

17 Q. And it's fair to say that you consider him your
18 friend?

19 A. Yes.

20 THE COURT: You went to school together.

21 Does that mean you're in the same grade?

22 THE WITNESS: I'm like a year older than him.

23 THE COURT: So you know him to be a year
24 younger than you?

25 THE WITNESS: Something like that. Basically

M. Berrios - People - Direct

926

1 I'm not sure, but we probably be in the same grade.

2 THE COURT: Okay.

3 Q. And how often would you socialize with him as your
4 friend?

5 A. During the past three years, four years, we been
6 close, you know, go play handball. We are really kind of
7 close. We do things together.

8 Q. Would you hang out with him on the weekend?

9 A. Yes.

10 Q. And would you occasionally hang out with him
11 during the week?

12 A. Yes.

13 Q. I'm going to direct your attention to September
14 28th of 2010. I'm going to direct your attention to
15 sometime in the vicinity of about a 5 p.m. or so. What
16 happened at that time?

17 A. I remember getting home from work. I was home
18 like for say 20 minutes, got a phone call from Ulises
19 telling me to let's go to the hospital together.

20 Q. And for what purpose?

21 A. He had gotten hurt at work.

22 Q. Do you know what his injury was?

23 A. He had told me something about his finger being
24 jammed.

25 Q. Now, do you know at that time, September 28th,

M. Berrios - People - Direct

927

1 2010, where did you Ulises Bonilla work?

2 A. At a factory in Urban.

3 Q. Is that Urban Avenue?

4 A. Urban Avenue.

5 Q. Is that in Westbury?

6 A. Yes, it is in Westbury, Nassau County.

7 Q. Do you know how far away that factory was from
8 Ulises Bonilla's house?

9 A. You could say like five minutes walk.

10 Q. Was his place of employment within walking
11 distance of his house?

12 A. Yes.

13 Q. And are you familiar with Bunkyreid Park?

14 A. Yes.

15 Q. Would you have to walk past Bunkyreid Park from
16 the factory to get to Ulises Bonilla's house?

17 A. Yes.

18 Q. Now, you said he wanted to go to the hospital; is
19 that correct?

20 A. Yes.

21 Q. Did you go to the hospital with him?

22 A. Yes.

23 Q. Now, how did you get to the hospital?

24 A. We -- we got picked up. I got picked up.

25 Q. And do you know who picked you up?

J.H.

M. Berrios - People - Direct

928

1 A. No.

2 Q. Did you go to the hospital with Ulises Bonilla?

3 A. Yes.

4 Q. Did his sister drive you to the hospital?

5 A. No.

6 Q. Was his sister at the hospital?

7 A. No.

8 Q. Did his sister use her car to get you to the
9 hospital?

10 A. No.

11 Q. Now, you get to the hospital. Do you recall who
12 is with you at the hospital?

13 A. Yes, it was three of us.

14 Q. Who were the three?

15 A. It's me, Ulises and some other guy.

16 Q. Was that other person a friend of yours?

17 A. Yes.

18 Q. Do you recall his name?

19 A. No. I just know him by his a/k/a.

20 Q. When you say a/k/a, what does that mean?

21 A. That's like a short. We call him Nigger.

22 Q. That's his nickname?

23 A. Yeah, like a nickname. I don't know his name.

24 Q. Now, do you recall how long you had to stay at the
25 hospital?

M. Berrios - People - Direct

929

1 A. I would say approximately like two hours.

2 Q. Did you see --

3 A. -- or more.

4 Q. Did you see where the injury to Mr. Bonilla was?

5 A. I can't really remember where it was, but I know
6 it was one of his fingers.

7 Q. Do you know what, if any, treatment he received
8 for that?

9 A. I can't tell you because I wasn't in the hospital
10 during the time he was getting treated.

11 Q. Okay. You mean you didn't see any treatment?

12 A. No, I didn't see no treatment get done. But we
13 was there for him to get treatment.

14 THE COURT: Was it bandaged?

15 THE WITNESS: No, I really didn't see. Like
16 I can't --

17 THE COURT: You didn't see any bandage?

18 THE WITNESS: No.

19 Q. Did you ever see the finger bleeding?

20 A. Yes, I did.

21 Q. Before the hospital?

22 A. Yeah, before we got to the hospital, I did see he
23 had an injury to his finger.

24 Q. Now, how did you get from the hospital -- where
25 did you go from the hospital?

M. Berrios - People - Direct

930

1 A. From the hospital, we got picked up, and we
2 went -- I thought we were going home. We ended up at the
3 deli.

4 Q. Now, who picked you up from the hospital?

5 A. The same person that picked us up.

6 Q. Did Diana Bonilla pick you up from the hospital?

7 A. No.

8 Q. And you weren't picked up in Diana Bonilla's car?

9 A. No.

10 Q. So you go now -- you go to the deli?

11 A. Yes.

12 Q. Do you recall what deli you went to?

13 A. It's in Brooklyn -- in Westbury. It's Westbury
14 Deli.

15 THE COURT: Excuse me, did you just say
16 Brooklyn?

17 THE WITNESS: Yeah, Brooklyn Avenue, that's
18 the street name.

19 THE COURT: Brooklyn Avenue in Westbury?

20 THE WITNESS: Yeah.

21 Q. Who was with you at the deli?

22 A. It was me, Ulises and Nigger.

23 Q. And do you know --

24 A. We got dropped off at the deli.

25 Q. And at the deli, what did you do at the deli?

M. Berrios - People - Direct

931

1 A. We were standing there like for five minutes. And
2 then Ulises decided to buy two beers. Didn't see nothing
3 wrong with that. So we got two beers.

4 I think when we got out the store -- when he was
5 getting out the store, he bumped into Armando's cousin, and
6 little words got exchanged.

7 THE INTERPRETER: I'm sorry, I can't hear.

8 A. When Ulises came out of the store, I think he
9 bumped into Armando's cousin, and words got, you know, they
10 got into a little argument. So we just started walking to
11 Kinkel.

12 Q. Now, what kind of beer did you buy at the deli?

13 A. Coors Light.

14 Q. Do you know --

15 A. Forty ounce.

16 Q. And from the deli, you went to Kinkel Street?

17 A. Yes.

18 Q. How did you get there?

19 A. Walking.

20 THE COURT: The Court takes judicial notice
21 that 40 ounces is a quart and a quarter.

22 Q. These were big bottles?

23 A. Yeah, big bottle, glass bottle.

24 Q. Where did you go on Kinkel Street?

25 A. We found this deli. We started to walk to go to

M. Berrios - People - Direct

932

1 Kinkel with the beers. We got to my friend house. That's I
2 think 169, 170 something Kinkel.

3 Q. Where is the house located?

4 A. It's located on Kinkel, Kinkel Street.

5 Q. With you familiar with where the Villatoros lived?

6 A. Yes.

7 Q. Where is the house you went to in relation to
8 that?

9 A. Oh, it's across the street.

10 Q. So you went to the house across the street from
11 the Villatoros?

12 A. Yes. Because that would be like a hangout house.

13 Q. You would often hang out across the street?

14 A. Yes, yes.

15 Q. And with Ulises Bonilla?

16 A. Yes.

17 Q. Now, where would you hang out across the street,
18 like what location?

19 A. We were inside the yard.

20 Q. And what were you doing?

21 A. We were just having a normal night. You know, we
22 had went to the -- came from the hospital, got beers, just
23 talking like a regular normal night.

24 Q. What happened next?

25 A. So we were there talking for like, you know, a

M. Berrios - People - Direct

933

1 couple of minutes. Then all of a sudden Ulises gets a phone
2 call from somebody saying that Armando Villatoro was talking
3 stuff about him. That's when he -- when Ulises made a phone
4 call to him.

5 Q. Who did Ulises make a phone call to?

6 A. To Armando.

7 Q. So Ulises called Armando?

8 A. Yes.

9 Q. Could you hear anything about what Ulises was
10 saying?

11 A. Yeah, that he want to fight him, that he want to
12 fight Armando. And I think Armando agreed with it, and he
13 came.

14 Q. So the part that you could hear was Ulises telling
15 Armando that he wanted to fight him?

16 A. Yes.

17 Q. Now, what happened next after that conversation?

18 A. Then the conversation ended, and we stayed there
19 for five minutes. I was hoping nothing would happen.

20 Then Jocelyn came to Armando's house. She parked
21 in front of the house. That's when Ulises went across the
22 street and started talking to her.

23 Q. Where was Jocelyn?

24 A. She was parked in front of Armando's house.

25 Q. You saw Ulises go over to speak with Jocelyn?

M. Berrios - People - Direct

934

1 A. Yes.

2 Q. Could you hear anything about that conversation at
3 all?

4 A. No.

5 Q. And when Ulises walked over to Jocelyn's car,
6 where did you remain?

7 A. In the yard.

8 Q. What happened next?

9 A. My friend Niggers, he went to go get the gun.

10 THE COURT: I'm sorry?

11 THE WITNESS: My friend Nigger went to go get
12 a gun. So when he came with it, Ulises gave it to me.
13 So I grabbed it.

14 Q. Now --

15 THE COURT: I see, okay, go ahead.

16 A. That's before he goes to Jocelyn's car.

17 Q. Before he went to Jocelyn's car?

18 A. Jocelyn's car.

19 Q. Now, where -- what did you do with the gun?

20 A. So I hold it, and I still remained in the yard of
21 my friend's. Meanwhile he crosses the street to go talk to
22 Jocelyn.

23 THE COURT: Who crosses the street?

24 THE WITNESS: Ulises crosses street to go
25 talk to Jocelyn.

M. Berrios - People - Direct

935

1 Q. And at this point you are still in the yard at
2 179?

3 A. Yes.

4 Q. What happens next?

5 A. So we wait there. He's talking to Jocelyn for say
6 five, ten minutes, and I am in the yard.

7 THE COURT: Who is talking to Jocelyn?

8 THE WITNESS: Ulises is talking to Jocelyn
9 for say five, ten minutes. So I still remain myself in
10 the yard. I turned around, and that's when I see
11 Armando Villatoro running towards Ulises. That's when
12 I screamed to Ulises, Yo, bro, they are going to hit
13 you, they are going hit you. That's when Ulises just
14 jumped and Armando just hit him, and they started
15 fighting.

16 Q. Now, when they started fighting, what were they
17 doing?

18 A. They were just punching each other, like grabbing,
19 wrestling.

20 Q. So they were punching each other?

21 A. Yeah.

22 Q. And they were -- you said they were grabbing each
23 other?

24 A. Um-hum, you could say.

25 Q. When you say grabbed each other, how close were

M. Berrios - People - Direct

936

1 they to each other?

2 A. Like a close distance.

3 THE COURT: Like what?

4 THE WITNESS: Right net to each other. You
5 know how you bear hug somebody? Like that close, very
6 close to each other.

7 Q. Then what happened?

8 A. And then they are fighting. So I see one guy
9 trying to hit Ulises Bonilla from behind. That's when I ran
10 out from the yard where my friend lives at, and I ran to the
11 guy, and I had the gun outside already. So he seen the gun.
12 I told the guy, It's a one-on-one fight. Let them fight.
13 They had problems amongst each other. Let it be one-on-one,
14 nobody get in. This is going to be settled. It's a normal
15 fight, you know. So they are fighting.

16 It was seven of them that came with Armando, seven
17 of them and three of us. So when they are fighting, I am
18 walking away from the fight, from the scene. I am walking
19 away. So when I get to my friend house, I just shot the gun
20 to the air, to the air.

21 Q. How many times did you fire the gun?

22 A. Once to the air.

23 Q. Now, you said somebody tried that you saw to get
24 to Ulises?

25 A. No, they did not hit him.

M. Berrios - People - Direct

937

1 MR. MILLMAN: Objection to the leading nature
2 of the question, your Honor.

3 THE COURT: Overruled.

4 Q. Who were the people that you saw fighting?

5 A. Just Ulises and Armando.

6 Q. Did anyone get in?

7 A. No.

8 Q. And that's because of you?

9 A. Yes.

10 Q. Now, what happened when -- well, where were you
11 when you fired the gun?

12 A. I was in the yard.

13 Q. The yard where?

14 A. Of my friend house, across the street from
15 Armando's house.

16 Q. That house that you were hanging out at?

17 A. Yes, across the street from Armando' house. I was
18 still hanging in the yard.

19 Q. And what were you wearing on your face?

20 A. At first I had a hat on and nothing on my face.
21 But then I pulled it down. It was a hat made into a mask.

22 Q. So is it fair to say at first your face was
23 exposed?

24 A. Yes, it was exposed first.

25 Q. And you pulled your hat down to make a mask?

M. Berrios - People - Direct

938

1 A. Yeah.

2 Q. Is that when you fired the shot?

3 A. No.

4 Q. When did you fire the shot?

5 A. When I fired the shot was -- it had been it went
6 one -- when I went back to the yard, when I moved away from
7 the crowd, I went back to the yard. And then I wanted it to
8 stop. So I don't know, I just shot the gun to the air so
9 everybody could just scatter and go their way.

10 Q. And why did you put the mask on your face?

11 A. I don't know. It was just reflex. I don't know.

12 Q. You didn't want anyone to see you?

13 A. Yeah. I was just scared.

14 Q. Now, was there anyone else with a mask that you
15 saw?

16 A. No.

17 Q. So you were the only one with a mask?

18 A. Yes.

19 Q. Now, what happened after you fired the shot?

20 A. I fired the shot. That's when Ulises jumped,
21 jumped. And that's when we both started -- we bumped and
22 started heading the same direction.

23 After I shot the gun, I ran, because I was scared
24 for what I did. So he jumps.

25 THE COURT: Who jumps?

M. Berrios - People - Direct

939

1 THE WITNESS: Ulises jumps after the gunshot.
2 He jumps, and he look at me. He go, Bro, bro, I just,
3 you know, blow his brain cells out. I fucked up.

4 THE INTERPRETER: I can't hear.

5 THE COURT: Just one second. Either can I,
6 so I cannot repeat to you what the witness said.

7 Q. Let me just --

8 THE COURT: The only thing I heard is, I
9 fucked up, unquote. Did someone say is that?

10 THE WITNESS: Yes.

11 THE COURT: Who said that?

12 THE WITNESS: Ulises Bonilla says, I fucked
13 up, I fucked up. I stabbed him. I got him. You are
14 good. You are good. You are good. I fucked up. I
15 fucked up. I'm done. I'm done. Those are the words
16 that came out after that, and I didn't know what he was
17 talking about.

18 Q. Now, you said at first you didn't know what he was
19 talking about?

20 A. No.

21 Q. Now, when you fired the shot, was -- were Armando
22 and Ulises still fighting?

23 A. No.

24 Q. So after you fired the shot, they stopped
25 fighting?

M. Berrios - People - Direct

940

1 A. Yes.

2 Q. Now, you said you and Ulises ran in the same
3 direction?

4 A. Yes.

5 Q. What direction was that?

6 A. Towards Kinkel and Broadway.

7 Q. Is that fair to say you were running down
8 towards --

9 A. To his house, to his house.

10 Q. Could you see if there was any blood on him?

11 A. Yes.

12 Q. Did you see any blood?

13 A. Yes.

14 Q. Where?

15 A. The left ear.

16 THE COURT: I'm sorry?

17 THE WITNESS: Like his left ear, here, this
18 side right here.

19 Q. Could you tell if there was any blood anywhere
20 else?

21 A. No.

22 Q. And why is that?

23 A. It was dark. We can't see nothing.

24 Q. And did you see -- were you able to see if he had
25 any knife in his hand?

M. Berrios - People - Direct

941

1 A. No, I couldn't see if he had a knife.

2 Q. No, you're running down southbound on Kinkel
3 Street?

4 A. Yes.

5 Q. What happens next as you're running?

6 A. So we running. When we running through -- we
7 running almost at the same direction. So I am trying to get
8 away from him. So I just ran to the neighbor's house, and
9 he kept going straight. So I went through the neighbor's
10 house. That's when I ran into my friend Nigger. That's
11 when I was just in shock, nervous, and I just threw the gun
12 at him. I'm like, Bro, take it, do something with it, and I
13 left him with it and ran to my house.

14 Q. So --

15 A. Which is in shock.

16 Q. You ran?

17 A. Yeah, I ran.

18 Q. Is that back to your house?

19 A. Yes.

20 Q. So you did not get in the car?

21 A. No.

22 Q. When you left, what direction did you see Ulises
23 Bonilla run?

24 A. You could say to the park almost.

25 Q. So he was running still towards his house?

M. Berrios - People - Direct

942

1 A. Yeah, yeah.

2 Q. And you don't know where Henry Hernandez was?

3 A. No.

4 Q. Or your friend Nigger?

5 A. No.

6 Q. Now, I would like to show you what's already in
7 evidence --

8 MS. ABDI: Judge, if I may have the easel.

9 THE COURT: Put the easel in a fashion by
10 which all the members of the jury can see it as well as
11 the witness, but you can get off the stand if you need
12 to.

13 THE WITNESS: All right.

14 Q. Mr. Berrios, I'm now showing you what is already
15 in evidence as People's, I'm sorry, I can't see the exhibit
16 sticker.

17 COURT OFFICER: 58.

18 Q. 58 which is already in evidence. That's a sketch.
19 If you could please get off the witness stand, and if you
20 could just demonstrate to the jury where it was that you
21 turned off and ran towards your house?

22 A. This way.

23 MS. ABDI: Your Honor, may the record reflect
24 the witness is --

25 THE COURT: Just one second. I don't see

M. Berrios - People - Direct

943

1 what he's doing, so let me see myself. Okay.

2 Q. If you could please just show the direction that
3 you ran in?

4 A. We were around here. So we ran this direction.

5 THE COURT: That reflects --

6 THE WITNESS: That's going like Broadway.

7 THE COURT: Just one second, just one second.

8 THE WITNESS: I'm sorry.

9 THE COURT: That reflects a southerly
10 direction. Go ahead.

11 THE WITNESS: So I get into -- before I get
12 to his house, I got into his neighbor' house. And
13 that's when me and Nigger, Nigger was already in his
14 house already. So that's when me and him bump heads
15 together. That's when I just threw him the gun to him
16 and just take it, I don't know what I just did, just
17 take it, and I just left.

18 THE COURT: Does that reflect where you
19 turned in a westerly direction? This is a legend. You
20 just mentioned in a westerly direction.

21 THE WITNESS: I made a right.

22 THE COURT: Where?

23 THE WITNESS: Oh, I don't know the house. I
24 made a right the house before I got to his house. I
25 don't understand the question.

M. Berrios - People - Direct

944

1 THE COURT: Where did you make the right?

2 You don't know?

3 THE WITNESS: In the neighbor's house.

4 THE COURT: Where is that?

5 THE WITNESS: In Kinkel Street.

6 THE COURT: 168, 170?

7 THE WITNESS: 167.

8 MS. ABDI: Thank you.

9 THE WITNESS: Sorry about that.

10 Q. Now, as you were running down southbound on Kinkel
11 Street, what was Ulises Bonilla saying to you?

12 A. That he had messed up. He fucked up. He had
13 stabbed him and that he was done and I was good, and those
14 are the words that came out of his mouth.

15 Q. Could you tell what his demeanor was at that
16 point?

17 A. Hum?

18 THE COURT: What did he look like?

19 THE WITNESS: He was like in shock, you know,
20 like he was too high, like nervous. You could tell he
21 had did something. And I was in shock too for what I
22 did. But you could tell he knew what he was talking
23 about.

24 MR. MILLMAN: Objection.

25 THE COURT: Do you know what the term lucid

M. Berrios - People - Direct

945

1 means?

2 THE WITNESS: No.

3 THE COURT: It means with it. It means aware
4 of what's going on.

5 THE WITNESS: Yeah.

6 THE COURT: Did he appear to you to be aware
7 of what was going on?

8 THE WITNESS: In that moment, yes.

9 Q. Now, did you know at that point what had happened
10 to Armando Villatoro?

11 A. No.

12 Q. And when you ran somewhere by 167 Kinkel Street --

13 A. Um-hum.

14 Q. -- where did you go?

15 A. Home.

16 Q. When did you find out that Armando died?

17 A. The next day when I went to work, a coworker told
18 me.

19 Q. So that night, you did not know he had died?

20 A. No.

21 Q. And how did you feel after you learned that he had
22 died?

23 A. I felt bad.

24 MR. MILLMAN: Objection. Relevance.

25 THE COURT: Overruled.

M. Berrios - People - Direct

946

1 A. I felt bad.

2 Q. Now, and you did not go speak to the police?

3 A. No.

4 Q. In fact, you only spoke to the police on October
5 13th?

6 MR. MILLMAN: I'm going to object to the
7 leading nature.

8 THE COURT: When was the first time you spoke
9 to the police?

10 THE WITNESS: October 13th, 2011.

11 Q. 2010?

12 A. 2010, yeah. We're in '11 right now.

13 Q. You only spoke to them for the first time October
14 13th?

15 A. First time.

16 Q. That's about, you know, approximately two weeks
17 later; is that correct?

18 A. Um-hum, yes.

19 Q. Did you go voluntary?

20 A. Yes.

21 Q. And you were not arrested in connection with this
22 case?

23 A. No, no.

24 Q. And the police never told you they were going to
25 arrest you; is that correct?

M. Berrios - People - Direct

947

1 A. No.

2 Q. And on October 13th, 2010, did they make you any
3 promises?

4 A. No.

5 Q. Did they tell you anything about what they were
6 going to do with you?

7 A. No.

8 Q. Now, it's fair to say that from approximately 2006
9 to 2009, you, yourself, had some trouble with the law,
10 correct?

11 A. Yes.

12 Q. And you have a criminal record; is that correct?

13 A. Yes.

14 Q. In fact, November 12th of 2009, you were convicted
15 of attempted burglary in the third degree?

16 A. Yes.

17 Q. That's a felony, correct?

18 A. Yes.

19 Q. And in August of 2008, you were convicted of
20 criminal mischief?

21 A. Yes.

22 Q. That's a misdemeanor?

23 A. Yes.

24 Q. And June 21st, 2007, you were convicted of petit
25 larceny and attempted identity theft?

M. Berrios - People - Direct

948

1 A. Yes.

2 Q. Those are also misdemeanors, correct?

3 A. Yes.

4 Q. And in June -- July 20th of 2007, you were
5 convicted of operating a motor vehicle while impaired by
6 drugs; is that correct?

7 A. Yes.

8 Q. What drug was that?

9 A. Marijuana.

10 Q. And you were also convicted of reckless
11 endangerment?

12 A. Yes.

13 Q. Possession of a weapon?

14 A. Yes.

15 Q. And attempted menacing?

16 A. Yes.

17 Q. And that was for an incident with a box cutter?

18 A. Yes.

19 Q. Those were misdemeanors, correct?

20 A. Yes.

21 Q. And you pled guilty to those crimes?

22 A. Yes.

23 Q. And you were sentenced for them?

24 A. Yes.

25 Q. Now, you have spoken to the District Attorney

M. Berrios - People - Direct

949

1 about this case, correct?

2 A. Yes.

3 Q. And that's me?

4 A. Yes.

5 Q. Do you recall how many times we have spoken about
6 this case?

7 A. Yes, three times.

8 Q. Three times. Now, you were given a grant of
9 immunity --

10 A. Yes.

11 Q. -- for testifying truthfully in this case; is that
12 correct?

13 A. Yes.

14 Q. And that's -- that would cover your actions that
15 you committed on September 28th of 2010; is that correct?

16 A. Yes.

17 Q. And why are you saying what happened that night?

18 A. I'm saying it because it's the truth. It's the
19 only right thing I can do. It's the truth.

20 I feel bad to the guy. He didn't deserve what
21 happened to him. I feel bad for him and his family. I got
22 kids. I'm a father. He's a father. He left family behind.
23 He was an innocent guy. You know, nobody deserves something
24 like that. So I feel like by me being here right now, I'm
25 doing the right thing.

M. Berrios - People - Cross

950

1 Q. And you were friends with Ulises Bonilla?

2 A. Yes, I was friends with both Armando and Ulises.

3 Q. And this is not an easy thing for you to do here
4 today?

5 A. It's hard for me.

6 Q. Are you nervous?

7 A. I'm nervous.

8 Q. Now, it's fair to say that you were also concerned
9 about your own actions that night; is that correct?

10 A. Yes.

11 Q. You were afraid of getting into trouble yourself?

12 A. Yes, I was afraid because for the action I did by
13 having the firearm on me that night. I was afraid of that,
14 of getting arrested for the firearm.

15 Q. Now, did you ever hit Armando Villatoro?

16 A. No.

17 Q. Did you ever shoot Armando Villatoro?

18 A. No.

19 Q. Did you see anyone else get in between the fight
20 with Armando Villatoro and Ulises Bonilla?

21 A. No.

22 MS. ABDI: I have no further questions.

23 THE COURT: The District Attorney asked the
24 witness were you conferred immunity. Between 10:00 and
25 10:30 this date, before you were seated, the District

M. Berrios - People - Cross

951

1 Attorney asked the Court to confer immunity which upon
2 the recommendation of the District Attorney, the Court
3 granted. Go ahead.

4 CROSS-EXAMINATION

5 BY MR. MILLMAN:

6 Q. Mr. Berrios, you said that this is difficult for
7 you to do?

8 A. Yes.

9 Q. Let me ask you something. On the night of
10 September 28th of 2010, after you fired the gun, you say
11 that you ran down Kinkel Street?

12 A. Yes.

13 Q. Tell me something, when was it that Ulises made
14 the statement that you say he made to you about stabbing
15 Armando; when was it?

16 A. During the whole time we were leaving together,
17 he's leaving. So all he was telling me the whole way, Oh, I
18 fucked up, I fucked up. I stabbed him. I fucked up. You
19 good. You good, during the whole time.

20 Q. During the whole time that you were going down the
21 street?

22 A. Yeah, that's all that would come out. That's all
23 he would say the whole time.

24 Q. And so you're saying that this conversation took
25 place even before you were at 163 Kinkel Street?

M. Berrios - People - Cross

952

1 A. No, after.

2 Q. After? And when you passed 163 Kinkel Street, did
3 you see Ulises get into a vehicle in the driveway?

4 A. No.

5 Q. You didn't see that? Did you see anybody get into
6 a vehicle in the driveway?

7 A. No.

8 Q. By the way, if someone was walking on Kinkel
9 Street away from Armando's and toward Broadway, would
10 Broadway be the first street they would hit?

11 THE COURT: Do you understand that?

12 THE WITNESS: No, I really don't.

13 THE COURT: Rephrase it.

14 MR. MILLMAN: Sure.

15 Q. If you were to walk towards Broadway and Kinkel
16 Street, is there another street that you would hit before
17 Broadway, or is Broadway the first street?

18 A. I think that's the first street.

19 Q. Now, you were interviewed by the police in
20 connection with this, right?

21 A. Yes.

22 Q. And at that time -- that was on October 13th,
23 2010, right?

24 A. Yes.

25 Q. At that time you were asked a number of questions

M. Berrios - People - Cross

953

1 about what happened, right?

2 A. Yes.

3 Q. And at that time didn't you tell them something
4 different than what you just told us concerning when that
5 statement was made?

6 MS. ABDI: Objection.

7 MR. MILLMAN: I'm laying a foundation, your
8 Honor.

9 THE COURT: Overruled.

10 A. Hum?

11 Q. Didn't you tell them something different about
12 when Ulises made the statement that you say he made?

13 A. He made, no.

14 Q. No? Did you tell them that he made the statement
15 to you when you got to the corner of Broadway and Kinkel?

16 A. Before we get to the corner of Broadway and
17 Kinkel, he's already making the statement. He's telling me
18 before we get to Broadway, corner of Broadway and Kinkel.

19 Q. So it wasn't when you got to Kinkel, before?

20 A. We were on Kinkel when he's already telling me
21 everything. That's before we get to Broadway and Kinkel,
22 because I didn't get all the way to Broadway and Kinkel.

23 Q. When you were interviewed by the police, didn't
24 you say the following words to them: When we get to the
25 corner, Ulises is screaming at me like, Yo, fuck, fuck. I

M. Berrios - People - Cross

954

1 fucked up, man. I fuckin' killed him. I know I did. Did
2 you tell them that?

3 A. Yes.

4 Q. So you told them that the statement was made when
5 you got to the corner?

6 A. Yes.

7 Q. But you just told this jury a moment ago that he
8 was making the statement while you were on your way running
9 down the street before you got to the corner?

10 A. Yes.

11 Q. And by the way, when you were going down toward
12 Broadway with Ulises, you would have passed 154 Kinkel
13 Street, right?

14 A. Yes.

15 Q. You know who lives at 154 Kinkel Street?

16 A. I don't know the numbers on Kinkel Street.

17 Q. Were you on the right side or left side?

18 A. I was on the right side.

19 Q. Left side?

20 A. Right side.

21 Q. Right side?

22 A. Right side.

23 THE COURT: All right, you were going south;
24 is that correct?

25 THE WITNESS: Um-hum, yes.

M. Berrios - People - Cross

955

1 THE COURT: And you were on the right side of
2 the street?

3 THE WITNESS: On the same -- the same side,
4 right side. Still the same side. I never switched
5 sides. Right side.

6 THE COURT: That would be the west side?

7 THE WITNESS: I have no idea.

8 THE COURT: Something could be right and left
9 depending upon which way you are going.

10 Let me see that map. Just one second. All
11 right, using the map, tell the lawyer which side of the
12 street you were proceeding on.

13 THE WITNESS: This side, right side.

14 THE COURT: That would be the west side?

15 THE WITNESS: Yes, on the sidewalk.

16 Q. The west side, left side?

17 A. The right side.

18 Q. The left side?

19 A. My right, you know how you walk on the right side.

20 Q. Let me just ask it this way, Mr. Berrios --

21 THE COURT: Just one second. It's the left
22 side of the Exhibit F you are looking at it?

23 THE WITNESS: Oh, yeah.

24 THE COURT: But it's the right side of the
25 street when if you are proceeding southbound?

M. Berrios - People - Cross

956

1 THE WITNESS: Yes.

2 MR. MILLMAN: I see.

3 Q. Now, Mr. Berrios, you testified on direct
4 examination that when you saw Ulises, you noticed blood on
5 his left ear; is that what you said?

6 A. Yes, I notice blood on his left ear.

7 Q. And that's all you noticed?

8 A. Yes.

9 Q. But when the police interviewed you on October
10 13th of 2010, you didn't tell them that, did you?

11 A. No.

12 Q. You told them something else about where you saw a
13 blood on Ulises; isn't that right?

14 A. No. I recall, I don't recall, but -- I don't
15 know. I don't remember.

16 Q. Did you say the following words when they were
17 asking you questions about what happened: Question, did
18 Ulises have any injuries? Answer, all I seen if you put a
19 red shirt on me, and you motioned as if there was blood all
20 over the stomach.

21 Did you say that and do that when they were asking
22 you questions, Mr. Berrios?

23 A. Yes.

24 Q. But now you are telling us you remember just there
25 being blood on his left ear?

M. Berrios - People - Cross

957

1 A. Yeah, because when I got interviewed the first
2 time, if you grab a red shirt and you put it right here and
3 you have blood, you can have a red shirt and put it like
4 this, you have blood on your ear.

5 Basically told them the first interview you have
6 blood on your ear, but I say if you grab a red shirt, it
7 look like they had blood on this area.

8 Q. You didn't say that to them at that time?

9 A. I told them I saw blood.

10 Q. And you motioned to your stomach as if he had a
11 red shirt on?

12 A. Yes, I said if you had a red shirt.

13 Q. The fact that you are now telling us you only
14 noticed it on his left ear, that wouldn't have anything to
15 do with the fact that you were advised that Ulises was seen
16 going into the passenger seat, and no blood was found there?

17 A. Hum?

18 MS. ABDI: Objection.

19 Q. The fact that you are telling us that you only saw
20 blood on his left ear, that wouldn't have anything to do
21 with the fact that you were advised that Ulises was seen
22 going into the passenger seat of this car and there was no
23 blood found there?

24 THE COURT: Sustained. Were you advised
25 that?

M. Berrios - People - Cross

958

1 THE WITNESS: No.

2 Q. You never told them that?

3 A. No.

4 Q. Do you know Armando pretty well?

5 A. Yes.

6 Q. Miss Abdi didn't ask you about that. How long
7 have you known Armando for?

8 A. You could say like three, four years.

9 Q. You consider yourself friends about friend with
10 him?

11 A. Not very -- you know, friends, yeah. We hanged
12 out not too close but friends.

13 Q. Lets me ask you this: You had a personal
14 relationship with him, didn't you, a friendly relationship?

15 A. Yeah, we would talk once in awhile.

16 Q. You bought cocaine from him and a number of
17 occasions, right?

18 A. Yes.

19 THE COURT: Just one second.

20 MS. ABDI: Objection.

21 THE COURT: Overruled.

22 Q. As a matter of fact, on a regular basis, you
23 bought cocaine from Armando; is that right?

24 A. No.

25 Q. No? It was only once?

M. Berrios - People - Cross

959

1 A. Yes.

2 Q. And let me ask you something: At the time that
3 you heard Ulises talking on the phone, did you hear any
4 discussion about cocaine at that time?

5 A. No.

6 Q. No, you didn't hear anything about the fact that
7 Ulises owed Armando \$600?

8 A. No.

9 Q. You don't know anything about that?

10 A. No.

11 Q. You don't know anything about the fact --

12 A. No.

13 Q. Let me finish. You don't know anything about the
14 fact that Armando had sold cocaine to Ulises and others and
15 claimed that he was owed money?

16 A. No.

17 THE COURT: All right, ladies and gentlemen,
18 remember the instruction I gave you before, an
19 unanswered question is not evidence.

20 Q. After you got to the corner, did you ever see
21 Ulises get into the vehicle?

22 A. No.

23 Q. At any time?

24 A. No.

25 MR. MILLMAN: Give me one moment, your Honor.

M. Berrios - People - Cross

960

1 Q. When you were speaking to the police on October
2 13th of 2010, you were asked a number of questions about
3 whether or not you saw Ulises get into a car, weren't you?

4 A. Yes.

5 Q. And at that time didn't you tell them that, quote,
6 Nigger, Ulises and the other one got into the car?

7 A. Yes.

8 Q. You did tell them that?

9 A. Yes.

10 Q. And but you just told this jury a moment ago that
11 you never saw him get into the car?

12 A. Yes.

13 Q. I see. The individual who took you with Ulises
14 and Nigger to the hospital, is that a person whose a/k/a is
15 Snooby?

16 A. I don't know.

17 Q. Do you know if it's a person whose first name is
18 Merlin?

19 A. I don't know.

20 Q. You know it's not?

21 A. I wouldn't know.

22 Q. And at the time that you left the hospital with
23 Ulises, did you see a bandage on his finger?

24 A. No.

25 Q. Did you look for one?

M. Berrios - People - Cross

961

1 A. No.

2 Q. And what about when you were at the deli with
3 Ulises just afterwards, did you see a bandage on his finger?

4 A. No.

5 Q. Did you look for one?

6 A. No.

7 Q. And the deli that you were at, by the way, with
8 him afterwards, where is that located?

9 A. It's called Westbury Deli. It's located on
10 Brooklyn Ave in Westbury on the corner of Prospect and
11 Brooklyn Ave.

12 Q. You testified that Diana did not drive you to the
13 hospital, right?

14 A. Yes.

15 Q. Am I right in saying that you weren't with Ulises
16 when he was at his house before he left to go to the
17 hospital, were you?

18 A. No, I wasn't.

19 Q. When you saw Ulises approach Jocelyn's car just
20 before the fight happened, did Ulises have anything in his
21 hand?

22 A. No.

23 Q. You were hanging out with Ulises and Nigger just
24 prior to the time this happened, right?

25 A. Yes.

M. Berrios - People - Cross

962

1 Q. The person whose nickname you know as Nigger, is
2 his name Henry?

3 A. I can't tell you. I don't know.

4 Q. When you heard the telephone conversation between
5 Ulises and another individual while you were there, there
6 came a time when you knew that Armando was coming over
7 there, right?

8 A. I kind of knew that he was coming over there over
9 the conversation that they had, yes.

10 Q. You didn't just kind of know, you knew?

11 A. I knew.

12 Q. You knew exactly what was about to happen?

13 A. Yeah, yeah.

14 THE COURT: Did Ulises, when he was speaking
15 over the phone, mention the name Armando?

16 THE WITNESS: No.

17 THE COURT: You assumed it was Armando?

18 THE WITNESS: Because the guy that was on the
19 phone told him who it was.

20 THE COURT: So the phone was given --

21 THE WITNESS: Yes, but hearing the
22 information, I knew who they were talking about. I
23 already knew who they were talking about.

24 Q. And so after Ulises got off the phone, you knew
25 Armando was on his way?

M. Berrios - People - Cross

963

1 A. Yes.

2 Q. You knew he was going to fight Ulises?

3 A. Yes.

4 Q. And you wanted to help him out, right?

5 THE COURT: Help who out?

6 MR. MILLMAN: Help Ulises out.

7 A. No.

8 Q. Let me ask you this: When you heard Ulises get
9 off the phone, it wasn't too long after that that you had a
10 gun in your hand, right?

11 A. Say it took like five, ten minutes.

12 Q. You kept that gun in your hand, didn't you?

13 A. Yes.

14 Q. Let me see if I have it right, the words I think
15 you used when you noticed that someone started to get in on
16 this, you said they have problems amongst each other; is
17 that what you said?

18 A. Yes, they had a conflict amongst each other.

19 Q. I see. That's what you said to them when you had
20 the gun in your hand?

21 A. Yeah. I was like --

22 Q. Did you say anything else?

23 A. No. I was like, Nobody get in. Let them fight.
24 They got problems amongst each other. Let them handle this
25 one-on-one.

M. Berrios - People - Cross

964

1 And that's what happened. Nobody got in. Nobody
2 touched them. But I wasn't there to help him out or help
3 the other guy out.

4 Q. I see.

5 A. Know what I mean?

6 Q. Did you say while you had the gun in your hand and
7 you had your finger on the trigger, did you say to anyone
8 that don't call the police; did you say those words?

9 A. No.

10 Q. You didn't say that?

11 A. No.

12 Q. And did you threaten to shoot anyone there if when
13 they tried to get in?

14 A. Nobody get in.

15 Q. Did you say, Mr. Berrios, that you would shoot
16 anyone who tried to get in?

17 A. No.

18 Q. And after you took the gun out and shot it in the
19 air, you kept gun out in your hand, didn't you?

20 A. Yeah. That's why I was trying to leave with it to
21 get rid of it.

22 Q. But you had the gun out before that also, right?

23 A. Yes.

24 Q. While they were fighting?

25 A. Yes.

M. Berrios - People - Cross

965

1 Q. The reason you had the gun out is because you
2 didn't want anyone to get in while they were fighting?

3 A. Yes.

4 Q. You're basically holding everyone at bay while the
5 two of them were fighting?

6 A. I put it out because somebody had a stick and was
7 goings to his Ulises. I ran to him, and that's the point
8 when the gun came out. But my intention was never to hurt
9 nobody, if that's what you want to know.

10 Q. Let me ask you this: At the time was it Henry
11 that handed you the gun, by the way?

12 THE COURT: I'm sorry?

13 A. Yes.

14 Q. Was it Henry that handed you the gun?

15 A. No. Ulises did.

16 Q. So at that time fair to say that Ulises knew that
17 you had a gun?

18 A. Yes.

19 Q. Ulises is a lot bigger than Armando, isn't he?

20 A. Yes.

21 Q. He knew you had a gun there?

22 A. Yes.

23 Q. You wouldn't even need a knife, would you?

24 MS. ABDI: Objection.

25 THE COURT: Sustained.

M. Berrios - People - Cross

966

1 Q. And when you saw Armando approaching Ulises, what
2 did Armando have in his hand?

3 A. I couldn't see. I couldn't see what he had in his
4 hands. All I seen was him running to Ulises. That's when I
5 screamed to Ulises, Bro, he's about to hit you. And that's
6 when they started fighting.

7 Q. Even if you can't explain it, did you see an
8 object in Armando's hands?

9 A. No.

10 Q. No?

11 A. No, I can't -- I can't really recall. I can't
12 really recall if I seen an object in his hands.

13 I seen him run with his fist like this. But I
14 can't really remember if I seen an object.

15 Q. You don't recall?

16 A. No.

17 Q. Let me see if I can help you. When you spoke to
18 the police on October 13th of 2010, did you tell them that
19 Armando had a crowbar, kind of like a crowbar in his hand?

20 A. Yes.

21 Q. You did tell them that, right?

22 A. Yes.

23 Q. And Armando rushed Ulises and started hitting him?

24 A. Yeah, I seen him hit him, and that's when they
25 started fighting.

M. Berrios - People - Cross

967

1 THE COURT: Hit him with what?

2 THE WITNESS: Like I said, I can't recall.
3 With his hands. Like somebody rushing to you to hit
4 you right here with the side, and you started fighting.

5 THE COURT: Come on up here.

6 (The following occurs at sidebar outside of
7 the hearing of the jurors.)

8 THE COURT: This is the first time that any
9 testimony has come out which might justify the use of
10 deadly physical force when deadly physical force was
11 used against him. At this particular time him him
12 telling me that you are imposing the defense of
13 justification?

14 MR. MILLMAN: Well, at this time -- first
15 all, this is her witness. However, let me just say
16 this: I haven't decided yet if my client attempted
17 self-defense. I do know when he gave the statement, he
18 indicated the same thing. Armando came with the
19 crowbar. I suspect that I may be asking the Court to
20 charge justification despite fact that I am aware that
21 it's inconsistent with the theory I am seeking. But I
22 am permitted to argue the alternative, could be
23 consistent with the evidence.

24 In the event that a jury does find that he
25 stabbed him, if they conclude that, I think this

M. Berrios - People - Cross

968

1 evidence would support a justification charge. I know
2 she is going to argue the number of stab wounds, but
3 that's why I believe the cocaine in his system could be
4 relevant.

5 THE COURT: So basically you may ask me to
6 charge justification?

7 MR. MILLMAN: I may.

8 THE COURT: All right, now, do you have
9 anything to say at this point?

10 MS. ABDI: Not at this point.

11 THE COURT: You understand that the defense
12 of justification may not apply if it happens during a
13 confrontation which is not allowable by law? In other
14 words, and I don't mean to be facetious, dueling is not
15 allowed in the State of New York. Obviously swords are
16 not used, pistols are not used, but deadly physical
17 force can be considered an agreement to quote, unquote
18 duel. Okay.

19 (The following takes place in open court.)

20 Q. So Mr. Berrios --

21 A. Yes.

22 Q. -- Armando got the jump on Ulises?

23 A. Hum?

24 Q. Armando got the jump on Ulises?

25 A. Yes.

M. Berrios - People - Cross

969

1 Q. And he had a weapon in his hand even though you
2 don't know what it was, a weapon, right?

3 A. Yes.

4 Q. And he's hitting you repeatedly with?

5 A. Hum?

6 Q. He's hitting you repeatedly with it?

7 A. I didn't see that.

8 Q. You didn't see that?

9 A. I seen him once when he rushed him the first time.

10 Q. Did you see Ulises on the ground as he was hitting
11 him?

12 A. I seen both of them just going to the ground
13 together.

14 Q. Did you ever see the two of them separate and
15 start to talk?

16 A. No.

17 Q. This went on; it was very quick, right?

18 A. Yes.

19 Q. Did you see any opportunity for Ulises to have
20 grabbed anything?

21 A. I can't see that much because it was too dark.

22 Q. And when Armando came, by the way, he separated
23 himself from the crowd and ran at Ulises, right?

24 A. Yes. He was out of the crowd. He was the main
25 one in front of everybody.

M. Berrios - People - Cross

970

1 Q. He was, wasn't he?

2 A. Yeah. He got to his house before the whole crowd
3 would have gotten there.

4 Q. And by the way, out of everyone, he came there
5 with about seven guys, didn't he?

6 A. Yes.

7 Q. And they had weapons in their hands?

8 A. Yes. We were outnumbered.

9 THE COURT: Just one second. That's not what
10 the lawyer asked you. Did the other seven have weapons
11 in their hands?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 THE WITNESS: Yes.

15 Q. And, in fact, after they started fighting, more
16 people that were with Armando started coming out, right?

17 A. Yes.

18 Q. And more of Ulises' friends started coming out?

19 A. No.

20 Q. I'm sorry?

21 A. Not at that moment.

22 Q. Not at that moment, but at some point?

23 A. After I shot the firearm, that's when I seen
24 people from his house coming. But not when they were
25 fighting. It was just us three and the crowd that was with

M. Berrios - People - Cross

971

1 Armando.

2 Q. Certainly there were a number of Ulises' friends
3 there while this was going on, right?

4 A. Not my friends.

5 Q. I'm asking you --

6 A. I don't know.

7 Q. You know Ulises for a while?

8 A. Yes.

9 Q. You know who he hangs out with?

10 A. Yes.

11 Q. Did you see anyone there that you recognize as
12 being Ulises' friend?

13 A. Just me and the other guy that was with us.

14 Q. Armando's friends were there with sticks, right?

15 A. Yes.

16 Q. And your testimony is you just sat there and
17 didn't touch Armando during the time that Ulises and Armando
18 were fighting?

19 A. Yes, nobody touched them.

20 Q. You didn't try to get Armando off of Ulises?

21 A. No. If that would have been the case, I never
22 would have shot the firearm.

23 Q. Isn't it true, Mr. Berrios, that after you shot
24 the gun, you saw Ulises get into a vehicle that was in the
25 driveway of his home at 163 Kinkel?

M. Berrios - People - Cross

972

1 A. I didn't see him get in the car.

2 Q. You didn't see Diana get in the car?

3 A. No.

4 Q. And you didn't get in the car?

5 A. No.

6 Q. By the way, did any member of the Nassau County
7 Police Department ever ask you to give a blood sample?

8 A. No.

9 Q. How far away from Ulises and Armando were you at
10 the moment when they started fighting?

11 A. At the moment, you could say like 20 feet.

12 Q. I'm sorry?

13 A. From my distance to your distance.

14 MR. MILLMAN: I guess let the record reflect,
15 your Honor, from the witness stand to where I am
16 standing, the podium at the end of the jury seating. I
17 don't know if --

18 A. I don't know how long that, say 15, 20 feet.

19 THE COURT: All right, as I said --

20 THE WITNESS: It's --

21 THE COURT: Just one second.

22 THE WITNESS: Sorry.

23 THE COURT: As I said, the distance between
24 the witness stand and the doorway is 50 feet. That's
25 less than half. So approximately 20 feet.

M. Berrios - People - Cross

973

1 THE WITNESS: Yeah.

2 Q. And Mr. Berrios, at that time, we are talking
3 about when the fight first started and you were about 20
4 feet way from them, was there anything between you and where
5 Armando and Ulises were?

6 A. No.

7 Q. You had a clear view of them, right?

8 A. Yes, at first I did.

9 Q. At the time that you shot the gun up in the air,
10 how far were you from Ulises and Armando?

11 A. Like, I mean, 30 feet.

12 Q. Thirty feet?

13 A. Like when I -- yeah, I'm way off.

14 Q. So you were further away?

15 A. Further a little. Because when they were
16 fighting, they kept moving. Now, when they fighting, they
17 keep moving.

18 Q. When they first started fighting, did you have the
19 gun out?

20 A. No.

21 Q. But at the time that you shot it, certainly you
22 had the gun out?

23 A. Yes.

24 Q. But when you had the gun out, you were further
25 away from where they were?

M. Berrios - People - Cross

974

1 A. Yes.

2 Q. Anything obstructing your view of them at that
3 time?

4 A. No.

5 Q. Nothing preventing you from seeing what was going
6 on, right?

7 A. No.

8 Q. Did you ever see Ulises stab Armando?

9 A. No.

10 Q. Did you ever see Ulises even touch a knife?

11 A. No.

12 Q. Did you ever hear Armando say any words to the
13 effect he has a knife?

14 A. No.

15 Q. Did you ever even see Ulises make a motion with
16 his arms that even resembled a stabbing motion?

17 MS. ABDI: Objection.

18 A. No, I couldn't see nothing. It was too dark.

19 THE COURT: Overruled.

20 Q. Did you ever hear Armando cry out in pain?

21 A. No.

22 Q. Did you ever hear him scream?

23 A. No.

24 Q. So during the time that he was fighting with
25 Ulises, you never heard him scream or cry out in pain?

M. Berrios - People - Cross

975

1 A. No.

2 Q. Now, the individual that you said has the nickname
3 Nigger, was he wearing a Cincinnati Reds cap that night?

4 A. Yes.

5 Q. Did you see him get into the fight between Ulises
6 and Armando?

7 THE COURT: Did you see who?

8 MR. MILLMAN: His name is Nigger, your Honor,
9 the nickname that he identified this person --

10 THE COURT: Did you see this individual join
11 the fight?

12 THE WITNESS: No, no.

13 Q. And you never saw him hit anybody with the yellow
14 stick?

15 A. No.

16 Q. Mr. Berrios, are you a member of the gang MS-13?

17 A. No.

18 Q. Were you ever a member of the gang MS-13?

19 A. No.

20 Q. Now, since you mentioned it, Mr. Berrios, you do
21 have a number of prior criminal convictions, correct?

22 A. Yes.

23 Q. And you were convicted on June 21st of 2007 of
24 petit larceny, correct?

25 A. Yes.

M. Berrios - People - Cross

976

1 Q. You were convicted of stealing, right?

2 A. Yes.

3 Q. And when you did that, you knew that it was wrong,
4 didn't you?

5 A. Yes.

6 Q. But you did it anyway, right?

7 A. Yes.

8 Q. Because it served your needs at the time, right?

9 A. Yes.

10 Q. For your conduct, you were sentenced initially to
11 three years probation, right?

12 A. Yes.

13 Q. That wasn't your ultimate sentence though, was it,
14 Mr. Berrios?

15 A. I be on probation still.

16 Q. You got probation, but did that change at
17 sometime?

18 A. Huh?

19 Q. Did that change, your probation sentence?

20 A. No.

21 Q. No?

22 A. I don't understand.

23 THE COURT: What he means is did the
24 Probation Department violate you while you were on
25 probation?

M. Berrios - People - Cross

977

1 THE WITNESS: Oh, yes.

2 THE INTERPRETER: Judge, I can't hear you.

3 THE COURT: Did the Probation Department
4 violate you while you were on probation.

5 THE WITNESS: Yeah.

6 Q. Is it coming back now, Mr. Berrios?

7 A. Yes.

8 Q. In fact, as a result of violating probation and
9 not following the terms of probation, you were resentenced
10 on that?

11 A. Yes.

12 Q. You were resentenced to 30 days in jail, correct?

13 A. Yes.

14 Q. On June 21st of 2007, you were also convicted of
15 attempted identity theft; isn't that a fact?

16 A. Yes.

17 Q. So you were convicted of knowingly and
18 intentionally defrauding another individual by assuming the
19 identity of another in order to obtain goods or services,
20 right?

21 A. Yes.

22 Q. When you did that, Mr. Berrios, you knew it was
23 wrong, didn't you?

24 A. Yes.

25 Q. You knew that you were hurting somebody else,

M. Berrios - People - Cross

978

1 right?

2 A. Yes.

3 Q. But you did it anyway because it served your needs
4 at the time; isn't that right?

5 A. Yes.

6 Q. On July 20th of 2007, you were convicted of
7 attempted menacing in the second degree; isn't that right?

8 A. Yes.

9 Q. And that was in connection, correct me if I am
10 wrong, with using a box cutter to intentionally place
11 another person in reasonable fear of injury, right?

12 A. Yes.

13 Q. I take it you knew that that was wrong, right?

14 A. Yes.

15 Q. You were also convicted of reckless endangerment,
16 correct?

17 A. Yes.

18 Q. And so you were convicted of reckless endangerment
19 acting in act -- so you were convicted of reckless engaging
20 in conduct which creates a substantial risk of serious
21 physical injury to another; isn't that right?

22 A. Yes.

23 Q. You were also convicted of criminal possession of
24 a weapon in the fourth degree; isn't that true?

25 A. Yes.

M. Berrios - People - Cross

979

1 Q. And that, again, was on July 20th, 2007?

2 A. Yes.

3 Q. And that was for possessing a dangerous or deadly
4 instrument with the intent to use the same unlawfully
5 against another, right?

6 A. Um-hum.

7 Q. I'm sorry, I didn't hear you.

8 A. Yes.

9 Q. You were also convicted on July 20th of 2000 --
10 withdrawn.

11 As a result of your act, placing another person in
12 fear of injury of a box cutter, you went to jail, didn't
13 you?

14 A. What?

15 Q. You went to jail as a result of conviction for
16 attempted menacing?

17 A. You say July?

18 Q. As a result of your conviction on July 20th of
19 2007 for attempted menacing, you were sentenced to jail,
20 correct?

21 A. Yes.

22 Q. Ninety days in jail, right?

23 A. Yes.

24 Q. By the way, on that same day, July 20th, 2007, you
25 were also convicted of operating a motor vehicle while under

M. Berrios - People - Cross

980

1 the influence of drugs, right?

2 A. Yes.

3 Q. And you did that, didn't you?

4 A. Hum? Yes.

5 Q. You knew that was wrong too, right?

6 A. Yes.

7 Q. You got 90 days in jail for that, didn't you?

8 A. Yes.

9 THE COURT: Four edification, ladies and
10 gentlemen, under our law, a conviction occurs when a
11 verdict is announced, be that verdict from a court or
12 of a jury. A sentence occurs ordinarily after that.

13 Q. Mr. Berrios, August 6th, 2008, you were convicted
14 of criminal mischief in the fourth degree, correct?

15 A. Yes.

16 Q. You were convicted of intentionally damaging
17 property of another person, right?

18 A. Yes.

19 Q. Of course, you knew that that was wrong when you
20 did it, right?

21 A. Yes.

22 Q. But it didn't stop you, did it?

23 A. No.

24 Q. As a result of your conduct, you received a
25 sentence of three years probation, right?

M. Berrios - People - Cross

981

1 A. Yes.

2 Q. Did you make it through the probation,
3 Mr. Berrios, without violating it?

4 A. No.

5 Q. No. You got in trouble again, didn't you?

6 A. Yeah, I did, because I stopped going to probation.

7 Q. I'm sorry?

8 A. Yes, I stopped going to probation.

9 Q. Let's talk about that. On November 12th of 2009,
10 isn't it fact that you were convicted of attempted burglary
11 in the third degree?

12 A. Yes.

13 Q. That's a felony, right?

14 A. Yes.

15 Q. So you were convicted of illegally entering or
16 remaining in a building with the intention of committing a
17 crime within, right?

18 A. Yes.

19 Q. And that was because you were in a deli in
20 Westbury, correct?

21 A. Yes.

22 Q. And it was about to close and you hid, right,
23 behind something when it closed and remained in there,
24 right?

25 A. Yes.

M. Berrios - People - Cross

982

1 Q. You knew you weren't supposed to be in there,
2 right?

3 A. Yes.

4 Q. But you didn't just remain in there, did you?

5 A. No.

6 Q. You did something else, right?

7 A. Yes.

8 Q. You stole, right?

9 A. Yes.

10 Q. Over \$1,000 worth of stuff, right?

11 A. No.

12 Q. I'm sorry?

13 A. Not over a thousand.

14 Q. You stole hundreds of dollars of stuff?

15 A. Not even hundreds. Like \$200.

16 Q. I'm sorry?

17 A. Like \$200.

18 Q. \$200. The \$200 that you took, it didn't belong to
19 you, needless to say, right?

20 A. Yes.

21 Q. And for your act of attempted burglary in the
22 third degree, you were sentenced by a judge to eight months
23 in jail; isn't that right?

24 A. Yes.

25 Q. And that was while you were on probation for the

M. Berrios - People - Cross

983

1 criminal mischief we just talked about moments ago, right?

2 A. Yes.

3 Q. On March 12th of 2010, were you also convicted of
4 aggravated unlicensed operation in the second degree?

5 A. Yes.

6 Q. You went to jail for that too, didn't you?

7 A. Yes.

8 Q. And so on each of these occasions, Mr. Berrios,
9 you knew that what you were doing was wrong, right?

10 A. Yes.

11 Q. And you did it anyway, right?

12 A. Yes.

13 Q. Because it served your needs at the time, right?

14 A. We all make mistakes in life, and I have learned
15 from my mistakes.

16 Q. But you did it because it served your needs at the
17 time?

18 A. Yes, at the moment it did. I used to do a lot of
19 drugs. Drugs were part of my life.

20 Q. And isn't that why you are telling this jury that
21 Ulises made a statement to you that you say he made because
22 it's serving your needs at this time?

23 A. Not really.

24 Q. Not really?

25 A. Because I'm only here to say the truth.

M. Berrios - People - Cross

984

1 Q. You -- are you married?

2 A. Yes.

3 Q. And do you have children?

4 A. Yes, three.

5 Q. How many?

6 A. Three.

7 Q. How old are they?

8 A. I got a six year old, a three year old and a one
9 year old.

10 Q. Are they girls, boys?

11 A. Two girls and one boy.

12 Q. So you have three children that you care about a
13 great deal at home, right?

14 A. Yes.

15 Q. And you have three children at home that care
16 about you?

17 A. Yes.

18 Q. You have been sentenced to prison before as we
19 discussed, right?

20 A. Yes.

21 Q. Obviously you didn't like it?

22 A. No.

23 Q. I mean in prison, the guards control everything?

24 A. Yes.

25 Q. They control your movements?

M. Berrios - People - Cross

985

1 A. Yes.

2 Q. What you eat, right?

3 A. Yes.

4 Q. They also control when you eat, right?

5 A. Yes.

6 Q. When you watch TV?

7 A. Yes.

8 Q. They control when you sleep, right?

9 A. Yes.

10 Q. And when you go from one place to another?

11 A. Yeah.

12 Q. You like your freedom, Mr. Berrios?

13 A. Everybody loves their freedom.

14 Q. Yes, everybody likes their freedom. And when you
15 are in prison, you don't have any privacy, do you?

16 A. You got privacy.

17 Q. Limited, right, not like when you're out?

18 A. No, no, but, you know.

19 Q. After you served your time on each of these
20 occasions, was the first thing you did to go back to your
21 family?

22 A. Yes.

23 Q. And after you served your time the last time that
24 you were in prison, you decided that you didn't want to go
25 to back to prison again, right?

M. Berrios - People - Cross

986

1 A. No.

2 Q. You wanted to make sure that you could avoid ever
3 having to go back?

4 A. Yeah. That's why I stopped doing what I was
5 doing.

6 Q. And that's why you are testifying here against
7 Ulises about that statement, right?

8 A. No, that's not why.

9 Q. This is not the first time that you are
10 cooperating, being offered a deal to testify against
11 someone, is it?

12 A. Yes, it is the first time.

13 Q. This is the first time?

14 A. Yes.

15 Q. Well, after you last served your term in prison,
16 you decided -- withdrawn, withdrawn.

17 As we discussed, you were questioned by the police
18 on October 13th in connection with your role as to what
19 happened on September 28th, right?

20 A. Um-hum.

21 Q. When they were questioning you, you knew they had
22 witnesses, didn't you?

23 A. Huh?

24 Q. You knew they had witnesses when they were
25 questioning you, right?

M. Berrios - People - Cross

987

1 MS. ABDI: Objection.

2 A. No.

3 THE COURT: Did you know that?

4 THE WITNESS: No, I didn't know that.

5 Q. When you had your hand on the gun, your finger on
6 the trigger and shot it into the air, you knew there were
7 other people around, right?

8 A. Yeah.

9 Q. So you knew there were witnesses?

10 A. Yeah.

11 Q. They didn't have to tell you?

12 A. I knew that people seen me. That's why I never
13 denied my part.

14 Q. You knew that many people saw you with the gun?

15 A. Yes.

16 Q. You knew many people saw you fire it, right?

17 A. Yes.

18 Q. You knew that was illegal to do, right?

19 A. Yes.

20 Q. You knew that you could be charged with a crime,
21 criminal possession of a weapon, right?

22 A. Yes.

23 Q. You didn't have a permit for that gun,
24 Mr. Berrios?

25 A. Not really.

M. Berrios - People - Cross

988

1 Q. You were in a jam; is that right?

2 A. Yes.

3 Q. You remember what prison was like when they were
4 talking to you, and you didn't want to go back, right?

5 A. No.

6 Q. And so you just started thinking about your
7 daughters, right, your children?

8 A. Yes.

9 Q. And you started thinking about developing a plan
10 to talk about whatever they wanted to hear to make sure that
11 you wouldn't go back; isn't that right?

12 A. No. I was in fear for my action for having a
13 firearm. I never had plans to talk to nobody or, you know,
14 try to save myself from anything.

15 Q. You didn't have plans to talk about it until they
16 brought you in, right?

17 A. Yeah.

18 Q. You decided that you were going to do whatever you
19 had to do to make sure you didn't go back to prison; isn't
20 that right?

21 A. Yes.

22 Q. And telling a story about Ulises making a
23 statement to you is the best way, the only way to avoid
24 going to prison; isn't that right?

25 A. No. Because it's me telling you the truth.

M. Berrios - People - Cross

989

1 Q. I see. Since you mention it, you entered into
2 this agreement with the District Attorney's office, right?

3 A. Yes.

4 Q. The agreement sets out a number things that you
5 have to do, right?

6 A. Yes.

7 Q. One of those things is testify truthfully, right?

8 A. Yes, truthfully.

9 Q. What if you don't testify truthfully, what
10 happens?

11 A. Then I will be convicted, I think, charged. But
12 I'm not here not to testify truthfully. I'm here to say the
13 truth.

14 Q. Now, basically as long as you testify and say that
15 you saw Ulises said something --

16 THE COURT: Just one second. Convicted of
17 what?

18 MR. MILLMAN: I'm sorry, your Honor?

19 THE COURT: Convicted of what?

20 MR. MILLMAN: I'm not sure which portion --

21 THE COURT: A couple sentences ago, you said
22 convicted. Convicted of what?

23 MR. MILLMAN: Criminal possession of a weapon
24 earlier.

25 THE COURT: Ladies and gentlemen, if someone

M. Berrios - People - Cross

990

1 receives immunity, they receive immunity. That's it,
2 except for perjury, okay?

3 Q. And so, Mr. Berrios, ultimately in exchange for
4 your testimony, you have been promised freedom, right?

5 A. Yes.

6 MS. ABDI: Objection.

7 THE COURT: Overruled.

8 Q. And that freedom is more valuable to you than any
9 amount of money; isn't that right?

10 A. Yes.

11 Q. You are getting paid a guarantee of freedom from
12 prosecution of possible jail time for testifying here today,
13 right?

14 A. Yes.

15 Q. And you know that if you told the police that
16 Ulises never made the statements that you say he made, you
17 wouldn't be getting this deal; is that right?

18 THE COURT: Do you understand that question?

19 THE WITNESS: No, I don't understand what he
20 is saying, no.

21 Q. You were aware when you spoke to the police for
22 the first time that if you told them you never heard Ulises
23 say anything, there would be no deal to you; isn't that
24 right?

25 A. Yeah. But I just needed to say the truth to

M. Berrios - People - Cross

991

1 somebody. I knew I didn't do nothing, so they were asking
2 me questions, and I was telling you the truth.

3 Q. It's about the truth?

4 A. Yeah, it's about the truth, you know.

5 Q. Tell me something, Mr. Berrios, you learned that
6 Armando died the day after this happened, right?

7 A. Yes.

8 Q. And so as of September 29th, 2010, you possessed
9 information that someone had confessed to you about killing
10 someone, right?

11 A. Um-hum.

12 Q. I'm sorry?

13 A. Yes.

14 Q. With this information, did you go to the police
15 with that information that day?

16 A. No.

17 Q. Did you go to them the next day?

18 A. No.

19 Q. In fact, Mr. Berrios, you never said a word to the
20 police about it until they brought you in for questioning;
21 isn't that right?

22 A. Yes.

23 Q. And you never said a word about it until they
24 questioned you about an incident in which you possessed a
25 loaded weapon and fired it into the air, right?

M. Berrios - People - Cross

992

1 A. Yes.

2 Q. And I think I should mention you haven't and will
3 not be charged with anything in connection with this
4 incident, right?

5 A. Yes.

6 Q. But Mr. Berrios, you were concerned more than just
7 being charged with reckless endangerment and criminal
8 possession of a weapon; isn't that right?

9 A. No. My fear was getting charged for the weapon.

10 Q. Now, after Armando attacked Ulises with the
11 crowbar, you were the first person to get in on this; isn't
12 that right?

13 A. I went to the -- the two individuals that wanted
14 to hit Ulises.

15 Q. I couldn't hear you.

16 A. I stopped the guy from hitting Ulises from behind.

17 Q. How did you stop him from hitting Ulises?

18 A. I ran up to him and told him, Don't get in, and he
19 seen the gun I had.

20 Q. You didn't do anything with your hands?

21 A. He seen the gun, and he seen my face.

22 Q. Before speaking to the police about this, you
23 became aware that a number of people in your neighborhood
24 were saying that you stabbed Armando; isn't that true?

25 A. Those are rumors that were going by the streets.

M. Berrios - People - Cross

993

1 Q. In fact, your sister even told you about that,
2 right?

3 A. Yeah, she heard rumors.

4 Q. You were concerned that you might be charged with
5 murder; is that right?

6 A. No, I was never concerned about that. My fear was
7 the whole time was the weapon.

8 Q. When you were interviewed on October 13th of 2001
9 by the police department, isn't it a fact that you said the
10 following words to them. Quote: They are going to look at
11 that time like this, all right? If they can't catch Ulises,
12 if you can, know what I mean? There ain't no way getting
13 away with murder. He can do 25 to life.

14 Did you say those words to the police when they
15 interviewed you on October 13th?

16 A. Yes.

17 Q. So you were concerned about you possibly being
18 charged with murder?

19 A. Oh, yes, yes.

20 Q. Yes, it's coming back now?

21 A. Yes.

22 Q. Let me ask you this: Didn't you also say that
23 quote, people were saying that I was the one that stabbed
24 the guy; do you remember saying that?

25 A. Yes.

M. Berrios - People - Cross

994

1 Q. Do you remember saying the following words when
2 they were talking to you about the gun that you used, quote,
3 I got to do what I got to do, you know what I mean? My
4 freedom is in jeopardy too now?

5 Did you say those word?

6 A. Yes, those words came out because of the gun.

7 Q. Those words came out, you said it?

8 A. I said it because -- I said it because of the gun.

9 Q. You knew that the police were going to have to
10 arrest somebody for this; someone was killed, right?

11 A. Yeah.

12 MS. ABDI: Objection.

13 THE COURT: Was that your understanding, the
14 police had to arrest somebody for this?

15 THE WITNESS: No.

16 THE COURT: All right.

17 Q. Mr. Berrios, you never saw Ulises with a knife,
18 and you knew he didn't do it but you also knew that your
19 freedom was in jeopardy; isn't that true?

20 MS. ABDI: Objection. Compound question.

21 MR. MILLMAN: It goes right towards bias and
22 motive.

23 THE COURT: That's not the basis of the
24 objection. It's a compound question. Sustained.

25 Q. You indicated you never saw Ulises with a knife?

M. Berrios - People - Redirect

995

1 A. No.

2 Q. You knew he didn't do this, didn't you?

3 MS. ABDI: Objection.

4 THE COURT: Overruled.

5 Q. I'm waiting for answer, Mr. Berrios.

6 A. No.

7 Q. You knew that he didn't do it, right?

8 A. Yeah, I can't answer the question because I know.

9 Q. And you made sure that you were going to say
10 whatever you had to say to make sure that you got the
11 freedom that you so desperately need?

12 A. No. I was sure that I was going to say the truth.

13 MR. MILLMAN: I see. I have nothing further.

14 THE COURT: Any redirect?

15 MS. ABDI: Yes.

16 REDIRECT EXAMINATION

17 BY MS. ABDI:

18 Q. Mr. Berrios, you did not stab Armando Villatoro?

19 A. No.

20 Q. Now, when you were running down Kinkel Street with
21 Ulises Bonilla, at some point you left him; is that correct?

22 A. Yes.

23 Q. He continued to run down Kinkel Street towards his
24 house, correct?

25 A. Yes.

M. Berrios - People - Redirect

996

1 Q. So you didn't see what he did after you left him;
2 is that correct?

3 A. No, no.

4 Q. Meaning?

5 A. Yes, no, I didn't see him what he did after that.

6 Q. And according to your testimony, you branched off
7 from him at 167 Kinkel Street; is that correct?

8 A. Yes.

9 Q. That's before you get to his house, correct?

10 A. Yes.

11 Q. You didn't run past -- you didn't run past 163
12 Kinkel Street?

13 A. No.

14 Q. And when you were speaking to the police on
15 October 13th of 2010, they never told you they were going to
16 charge you with anything; is that correct?

17 A. Yes.

18 Q. They never said I'm going to charge you with
19 murder?

20 A. No.

21 Q. They never said I'm going to charge you with
22 possession of a gun?

23 A. No.

24 Q. And they let you go, correct?

25 A. Yes.

M. Berrios - People - Redirect

997

1 MS. ABDI: I have nothing further.

2 MR. MILLMAN: Follow up if I may very
3 briefly, your Honor.

4 THE COURT: On a very limited area, that
5 which is brought up on redirect.

6 RECROSS-EXAMINATION

7 BY MR. MILLMAN:

8 Q. On redirect, Miss Abdi asked you if you passed 167
9 Kinkel Street. I have a different question to you. Did you
10 pass 154 Kinkel Street?

11 A. I don't know the numbers of houses.

12 Q. I see. And you state that the police never told
13 you they were going to charge you with anything, right?

14 A. Yes.

15 Q. But again, you knew you were being questioned in
16 connection with this incident, right?

17 A. Yes. And I was happy because I got to say, say
18 what I thought.

19 Q. You were happy? I thought this is hard for you?

20 A. At the moment, you know, I felt good, relieved
21 that at least I could say the right to, you know what I am
22 saying, I am telling truth.

23 Q. You feel good that you have a deal that gives
24 freedom?

25 A. I feel good that I am saying the truth, nothing

Det. J. Cereghino - People - Direct

998

1 about no freedom.

2 Q. They did not tell you they were going to charge
3 you, but have been around the block that you knew that you
4 were in trouble, right?

5 THE COURT: All right, sustained.

6 MR. MILLMAN: Nothing further.

7 THE COURT: You can step down.

8 (The witness was excused.)

9 THE COURT: Ladies and gentlemen, we are
10 going to take ten minutes right now. I want to get
11 into the testimony of the People's perhaps last
12 witness. So let's make the break short.

13 (Whereupon, the jury exits the courtroom.)

14 (A recess was taken.)

15 COURT OFFICER: Jury entering.

16 (The jury enters the courtroom.)

17 THE CLERK: Recalling case on trial, People
18 of the State of New York versus Ulises Bonilla,
19 Indictment 202N of 2011. All parties present,
20 including the Spanish interpreter and the defendant and
21 the jury.

22 Let the record reflect the presence of all
23 jurors. Both sides consent to the seating and waive a
24 reading of the roll?

25 MS. ABDI: Yes.

Det. J. Cereghino - People - Direct

999

1 MR. MILLMAN: Yes.

2 THE CLERK: Thank you.

3 THE COURT: The next witness.

4 MS. ABDI: People call Detective James
5 Cereghino.

6 THE COURT: We will go for about 20 minutes,
7 ladies and gentlemen, and then we will break.

8 D E T . J A M E S C E R E G H I N O, Shield 561, a witness
9 called on behalf of the People, after having been first
10 duly sworn by the Clerk of the Court, was examined and
11 testified upon his oath as follows:

12 THE CLERK: In a loud, clear voice, please
13 state your name and spell your last name and give your
14 shield and command.

15 THE WITNESS: My first name is James. My
16 last name is Cereghino, C-E-R-E-G-H-I-N-O. My shield
17 number is 561, and I'm a detective assigned to the
18 Homicide Squad of the Nassau County Police Department.

19 DIRECT EXAMINATION

20 BY MS. ABDI:

21 Q. Good afternoon, Detective.

22 A. Good afternoon, counselor.

23 Q. How long have you been employed as a police
24 officer in Nassau County?

25 A. Just short of 35 years.

Det. J. Cereghino - People - Direct 1000

1 Q. And how long have you been a detective in Nassau
2 County?

3 A. Twenty-four years.

4 Q. And how long have you been assigned to the
5 Homicide Squad?

6 A. Just short of 14 years.

7 Q. I'm going to direct your attention to September
8 28th of 2010. On that date, did you become involved in the
9 investigation of the death of Armando Villatoro?

10 A. Yes, I did.

11 Q. And how did you become involved in that
12 investigation?

13 A. I was working a night tour, and at 11:15 p.m., I
14 received a phone call from Detective Vacchiano from the
15 Third Squad advising me that there had been --

16 MR. MILLMAN: Objection.

17 THE COURT: After you received this phone
18 call, what did you do?

19 THE WITNESS: I responded to 180 Kinkel
20 Street in New Cassel.

21 Q. And it's fair to say, Detective, that you were the
22 lead investigator on this case; is that correct?

23 A. Yes, ma'am.

24 Q. And although you work in a team of investigators,
25 you were the investigating detective in this case; is that

Det. J. Cereghino - People - Direct

1001

1 correct?

2 A. Yes, ma'am.

3 Q. Now, once you responded to 180 Kinkel Street, what
4 did you do with respect to the scene at that point?

5 A. I took an overall look at the scene with the
6 assistance of some Third Squad detectives and crime scene
7 detectives that were already at the scene. I saw some
8 objects in the street. I saw a tire iron. I saw a yellow
9 metal stick. And down the block it was pointed out to me in
10 front of 163 Kinkel, there was a knife, looked like a
11 kitchen knife to me with a bent -- that was bent, and it
12 appeared to have blood on it.

13 Q. And those items were collected and processed by
14 crime scene detectives; is that correct?

15 A. After being photographed, yes, ma'am.

16 Q. And were you able to -- did you speak to witnesses
17 at the scene?

18 A. Yes, I did.

19 Q. And did you speak to a Jocelyn Gonzalez?

20 A. Yes, I did.

21 Q. Did you speak to a Nancy Villatoro?

22 A. Yes, I did.

23 Q. Did you speak to an Angel Leon with the assistance
24 of Spanish-speaking detectives?

25 A. Very briefly that night, yes.

Det. J. Cereghino - People - Direct

1002

1 Q. Did there come a time where you were looking for
2 any vehicles with respect to this case?

3 A. Yes.

4 Q. And what vehicle was that?

5 A. It was a 1998 Acura that was I believe owned by
6 Diana Bonilla, the sister of Ulises Bonilla.

7 Q. And you also spoke to Oscar Villatoro that night;
8 is that correct?

9 A. Yes, I did.

10 Q. And Susana Villatoro, correct?

11 A. Very briefly, because I needed an interpreter for
12 her.

13 Q. Now, at some point the vehicle of Diana Bonilla
14 was taken into, for lack of a better word, custody?

15 A. Yes, it was impounded.

16 Q. What does it mean to be impounded?

17 A. It was located parked on Kinkel Street on the
18 public street. It was impounded to our E building in
19 Bellmore so crime scene can process it as evidence.

20 Q. The E building was where crime scene was given the
21 opportunity to view that car; is that correct?

22 A. Yes, ma'am.

23 Q. Is it fair to say that you were looking for Ulises
24 Bonilla that night?

25 A. That night?

Det. J. Cereghino - People - Direct

1003

1 Q. Yes.

2 A. Yes, ma'am.

3 Q. And were you able to find him that night?

4 A. No, ma'am.

5 Q. Did there come a time when you were able to locate
6 him?

7 A. Yes.

8 Q. When did that come?

9 A. We arrested him November 26th, 2010 in Penn
10 Station.

11 Q. From September, approximately September 28th,
12 2010 -- withdrawn.

13 From approximately September 28th, 2010 until
14 November 26th of 2010, were you making attempts to ascertain
15 his whereabouts?

16 A. As part of the investigation, yes, ma'am.

17 Q. And what areas, where did you look for him?

18 A. We put surveillance on his house at 163 Kinkel.
19 He had a girlfriend that lived at 27 James in Hicksville.
20 We conducted surveillance there, and we also followed her
21 around hoping that she might take us to him.

22 A confidential informant had called and stated
23 that he was up in the Boston area, so -- and the cousin of
24 the deceased had provided us with a My Space name that he
25 was using. We did have him at an IP address once up in

Det. J. Cereghino - People - Direct 1004

1 Boston. I was never able to locate it. Subsequently the
2 confidential informant told us that he was back and
3 working --

4 MR. MILLMAN: Objection what the informant
5 said, your Honor. That's hearsay.

6 THE COURT: All right, you spent a great deal
7 of time trying to locate the whereabouts for the
8 purpose of apprehending the defendant?

9 THE WITNESS: Yes, sir.

10 THE COURT: And you were unsuccessful in two
11 months; is that correct?

12 THE WITNESS: Yes, sir.

13 THE COURT: You were -- you completed this
14 task on November 26th?

15 THE WITNESS: Yes, sir.

16 THE COURT: Why don't you just go into what
17 immediately happened on November 26th or November 25th.

18 Now, ladies and gentlemen, I want to give you
19 an instruction in this regard. You are here to
20 determine facts as testified to by a witness. You are
21 not here to go over an investigation as conducted by
22 the police department. You may be curious about that,
23 but it's beyond your function.

24 DIRECT EXAMINATION

25 BY MS. ABDI: (CONTINUED)

Det. J. Cereghino - People - Direct

1005

1 Q. Detective, you located the defendant or you
2 located Ulises Bonilla in Penn Station; is that correct?

3 A. Yes, ma'am.

4 Q. Do you see him in the courtroom today?

5 A. Yes, I do.

6 Q. Can you please point him out and identify an
7 article of clothing he's wearing?

8 A. He's the gentleman, the male white Hispanic
9 sitting at the table in the blue shirt, long-sleeve collared
10 blue shirt.

11 MS. ABDI: Your Honor, may the record
12 identify the witness identified the defendant?

13 THE COURT: Yes.

14 Q. And he was taken into custody at that point; is
15 that correct?

16 A. Yes, ma'am.

17 Q. What was his date of birth?

18 A. July 29th, 1988.

19 Q. What was his address?

20 A. 163 Kinkel Street in Westbury, New York.

21 Q. Now, with respect to this investigation,
22 Detective, you also spoke to an individual named Misael
23 Berrios; is that correct?

24 A. Yes, I did.

25 Q. And that was on October 13th of 2010?

Det. J. Cereghino - People - Cross

1006

1 A. Yes, ma'am.

2 Q. And did he come with you voluntarily to the police
3 station?

4 A. Plainclothes officers of the Third Precinct went
5 to his house, and he voluntarily responded with them to my
6 office where I was.

7 Q. And did you make him any promises on that date?

8 A. No, ma'am.

9 MS. ABDI: I have no further questions.

10 CROSS-EXAMINATION

11 BY MR. MILLMAN:

12 Q. Good afternoon, Detective Cereghino.

13 A. Good afternoon, counselor.

14 Q. Detective, on the day in which the plainclothes
15 officers went to Mr. Misael Berrios's place and asked him to
16 come in, what day was that?

17 A. I believe it was October 13th.

18 Q. Prior to that time, do you have any knowledge of
19 Misael Berrios ever contacting the police department to
20 advise that he had important information about a homicide?

21 THE COURT: On this case.

22 A. Not to my knowledge, no, sir.

23 Q. And when he was asked to come in, how many
24 plainclothes officers went over his house?

25 A. I believe it was two.

Det. J. Cereghino - People - Cross

1007

1 Q. It was two? Detective, this incident was
2 initially called in as a shooting, correct?

3 A. Yes, sir.

4 Q. In fact, several witnesses who were there called
5 this in as a shooting?

6 A. Yes, sir.

7 Q. We know that this is a stabbing. But did any of
8 the 911 calls that came in by civilians ever report this as
9 a stabbing?

10 MS. ABDI: Objection.

11 THE COURT: I'm sorry?

12 MR. MILLMAN: Ever report it as a stabbing.

13 MS. ABDI: Objection. Hearsay.

14 THE COURT: When you went to the scene for
15 the first time, was the scope of your investigation
16 centering around a stabbing or a shooting?

17 THE WITNESS: Both occurred, but prior to
18 arrival, I knew that the deceased had been stabbed
19 there.

20 THE COURT: Did the medical examiner arrive
21 at the scene?

22 THE WITNESS: Well, your Honor, he was
23 transported to the hospital, and he was pronounced dead
24 there.

25 Q. And so before you arrived, Mr. Villatoro was

Det. J. Cereghino - People - Cross

1008

1 removed from the scene and taken by ambulance?

2 A. Yes, sir.

3 Q. You had learned, of course, that he had stab
4 wounds on him?

5 A. Yes, sir.

6 Q. And you saw the knife at the scene?

7 A. Yes, sir.

8 Q. But what I was asking more specifically is to your
9 knowledge, did any of the 911 calls that were made to the
10 police department make any reference to a stabbing?

11 A. I don't believe so, no, sir.

12 MS. ABDI: Objection.

13 THE COURT: Overruled.

14 Q. Did you conclude from that, Detective, that the
15 witness was present and not actually witnessed the act of
16 the stabbing itself?

17 MS. ABDI: Objection.

18 THE COURT: Sustained. That's basically an
19 assumption of him based upon an assumption of someone
20 else. That's sustained.

21 Q. Would it be fair to say, Detective, that the
22 determination by the police that this was a stabbing was
23 made based upon the stab wounds themselves as opposed to
24 anything that any witness said?

25 MS. ABDI: Objection.

Det. J. Cereghino - People - Cross

1009

1 THE COURT: Overruled.

2 A. Yes.

3 Q. Now, how long did -- withdrawn.

4 Detective, how long were you at the scene that
5 night for?

6 A. I'd have to check the time log. Two or three
7 hours maybe.

8 Q. And when you got there, there were already other
9 police there?

10 A. Yes, sir.

11 Q. And they were searching, looking through the
12 scene; would that be fair to say?

13 A. They were safeguarding the scene, yes, sir.

14 Q. Were they actively looking at any evidence from
15 what you could see when you arrived there?

16 A. Uniform officers?

17 Q. Or nonuniform, anybody from the Nassau County
18 Police Department.

19 A. I believe crime scene was there before -- I
20 believe they were there before me, and they are very good at
21 what they do. So --

22 Q. And when you left, were there still police
23 personnel there at the scene?

24 A. I believe so, yes.

25 Q. I think you had testified that a tire iron had

Det. J. Cereghino - People - Cross

1010

1 been recovered from the scene?

2 A. Yes, sir.

3 Q. Was that ever tested for blood?

4 A. I don't believe so. Other than visually?

5 Q. Tested for DNA.

6 A. I don't believe so, no, sir.

7 Q. There were other items that were tested in this
8 case --

9 THE COURT: To your knowledge, it wasn't
10 tested for blood or DNA?

11 THE WITNESS: Yes, sir, it was not tested.

12 Q. Now, other items were tested for either blood or
13 DNA, right?

14 A. Yes, sir.

15 Q. Now, this was an object that a witness had
16 reported my client to have been holding at one point; is
17 that right?

18 THE COURT: At that time.

19 A. I believe the witness put the tire iron in both
20 the victim's hand at one point and the defendant's hand,
21 yes, sir.

22 Q. And my client was charged with criminal possession
23 of a weapon in part for possessing that item?

24 A. I believe the criminal possession of a weapon was
25 for the knife.

Det. J. Cereghino - People - Cross

1011

1 Q. Okay. But wasn't there also another charge with
2 respect to that iron?

3 THE COURT: Detective, we are not talking
4 about the police charges. We are talking about the
5 grand jury charges.

6 A. I'd have to review the charges.

7 Q. Fair to say that -- withdrawn.

8 THE COURT: Ladies and gentlemen, there is a
9 weapons charge in the indictment pertaining to a tire
10 iron.

11 Q. Detective, do you know who Erika Sims is?

12 A. Erika Sims, yes.

13 Q. Did you speak with her about this case?

14 A. Yes.

15 Q. On occasion, did you have one or more meetings
16 with her and somebody else about what items were tested for
17 DNA?

18 A. Yes, we had one meeting with other members from
19 the DNA lab.

20 Q. Do you remember how many members other than Miss
21 Sims were present?

22 A. From the DNA lab?

23 Q. Yes.

24 A. I honestly don't recall. There was some members
25 from the medical examiner's office, and there were, I think,

Det. J. Cereghino - People - Cross

1012

1 my sergeant, Sergeant Westmeister was there along with
2 myself.

3 Q. And -- so other than yourself and Westmeister,
4 anybody else from the Nassau County Police Department there?

5 A. I don't think so.

6 Q. Would it be fair to say that yourself and
7 Westmeister would have been the two that had by far the most
8 knowledge about the actual investigation of the murder?

9 A. Yes.

10 Q. And a decision was made, am I correct, not to have
11 the tire iron tested for DNA?

12 A. Yes, sir.

13 Q. And was that a decision you made?

14 A. It was a decision that was -- it was a request
15 that I made, and it was concurred with the DNA lab.

16 Q. But that decision, am I right, had nothing to do
17 with not being able to test it but was rather a
18 discretionary decision that it was not important as other
19 items?

20 A. It was evaluated as possible evidence, and it
21 didn't seem it to be necessary.

22 Q. Did you also become aware of the fact a wristwatch
23 had been recovered from the scene?

24 A. I believe there were two.

25 Q. Yes.

Det. J. Cereghino - People - Cross

1013

1 A. Which one are you referring to?

2 Q. One of the wristwatches was determined to have
3 been worn by the victim, right?

4 A. The one that was recovered in the street?

5 Q. Yes.

6 A. I believe so, yes, sir.

7 Q. And did you become aware at some point that there
8 was a substance that had the appearance of blood on the face
9 and back of that watch?

10 A. Yes, sir.

11 Q. And was that tested for any DNA?

12 A. I don't believe it was, no, sir.

13 Q. And was that decision also made as a discretionary
14 decision unrelated to not being able to test it?

15 A. It could have been tested. It didn't seem
16 necessary.

17 Q. So it's your choice not to test it?

18 A. To preserve it but not to test it at that time.

19 Q. Or at any time, right?

20 A. It could still be tested.

21 Q. But to date, it hasn't been; is that right?

22 A. No, sir.

23 Q. You were also aware of a white cardboard box that
24 was recovered from the back seat of the Acura, right?

25 A. Yes, sir.

Det. J. Cereghino - People - Cross

1014

1 Q. Did you become aware at some point that there were
2 five stains on that cardboard box?

3 A. Bloodstains? What appeared to be bloodstains?

4 Q. Yes.

5 A. Yes, sir.

6 Q. Am I right in saying that two of those five were
7 tested?

8 A. I don't recall the exact number. If you say so.

9 Q. But am I right in saying that there were --
10 whether it's two or three, there were some on that white
11 cardboard box that were not tested?

12 A. Yes, sir.

13 Q. Who made that decision?

14 A. It might have been someone from the DNA lab.

15 Q. And were you present when the decision was made?

16 A. I don't recall that I was.

17 Q. Now, these were stains that were on a white
18 cardboard box that had had been recovered from the back seat
19 of the vehicle that was seen fleeing the scene of this
20 incident; is that right?

21 A. That's what we believed, yes, sir.

22 Q. And there were reports of a number of people
23 getting into this vehicle before it fled the scene; is that
24 right?

25 A. Yes, sir.

Det. J. Cereghino - People - Cross

1015

1 Q. Don't you think that it would have been important
2 to find out what each of those stains that were on that
3 white cardboard box were?

4 MS. ABDI: Objection.

5 THE COURT: Overruled.

6 A. Anything's possible, counselor.

7 Q. Well, not just possible, but they all appeared to
8 be blood, right?

9 A. Yes.

10 Q. They weren't all tested though?

11 A. No, sir.

12 Q. And that was by choice?

13 A. Yes, sir.

14 Q. Did you also become aware of a clear plastic bag
15 with a red stain that was also recovered from the back seat
16 of this vehicle that had been seen fleeing the scene of this
17 homicide?

18 A. Yes, sir.

19 Q. Was that tested?

20 A. I don't believe so.

21 Q. And was that likewise a choice?

22 A. It must have been, yes, sir.

23 Q. It could have been tested?

24 A. Yeah, of course, it could have been tested.

25 Q. Wouldn't it also have been important to test it

Det. J. Cereghino - People - Cross

1016

1 given the fact that it was found in the back seat of a
2 vehicle that had been seen fleeing the scene?

3 MS. ABDI: Objection.

4 THE COURT: Overruled.

5 A. Important as to the other many items that were
6 tested?

7 Q. Important to the investigation.

8 A. You're saying equally important, sir?

9 Q. I'm sorry?

10 A. Are you saying equally important as to the many
11 other items that were tested?

12 Q. Just important, period. Wouldn't that have been
13 important in your investigation of this crime?

14 MS. ABDI: Objection.

15 THE COURT: Did you believe based upon all
16 your experience there was investigative and evidentiary
17 significance in testing these items?

18 THE WITNESS: I believe sufficient testing
19 was done.

20 Q. So you believed that testing two out of the five
21 stains was sufficient testing?

22 A. Yes, sir.

23 Q. When you made that decision, were you aware of the
24 fact that one of those two stains had been determined to
25 come from the victim?

Det. J. Cereghino - People - Cross

1017

1 A. The victim --

2 THE COURT: The victim's blood.

3 A. The victim's blood was recovered from the inside
4 of the defendant's sister's car. I don't recall whether it
5 was from the headrest, from the back seat, from the box. I
6 know it was recovered from inside the car, yes, sir.

7 Q. But do you recall that the victim's blood was
8 found to be a match to one of the stains that was on the
9 white cardboard box?

10 A. Yes, sir.

11 Q. And did you also become aware at some point that
12 one of the stains that was found to be a match to the
13 victim's blood also had a second minor contributor that was
14 unknown?

15 A. Yes, sir.

16 Q. And that that minor contributor, it was excluded
17 to be my client?

18 A. Yes, sir.

19 Q. Knowing that, you still did not feel that it was
20 important to test the other stains on this box?

21 A. We don't know where that minor contributor came
22 from. That might have been on the box prior to the murder.

23 Q. So wouldn't it have helped to see where these
24 additional stains came from? I mean it's a murder
25 investigation, right?

Det. J. Cereghino - People - Cross

1018

1 A. Yes, sir.

2 Q. Wouldn't it have helped?

3 MS. ABDI: Objection.

4 THE COURT: Sustained.

5 Q. The body was examined, correct, the victim's body?

6 A. Yes.

7 Q. Is there a method or a technique that you are
8 aware of called taping the body that's done in connection
9 with a homicide?

10 A. Taping it?

11 Q. Yes, to preserve anything that might be, you know,
12 gotten from the body or attached to any item on the body?

13 A. I am not aware of any taping. They will put the
14 body in a clean sheet to preserve anything, whether it might
15 be hair or microscopic, and then they will examine the sheet
16 when the remove the body from the sheet.

17 I am not aware of any taping no. If it occurs, I
18 am unaware of it.

19 Q. I'm just asking.

20 A. Okay.

21 Q. But I also wanted to ask you was any of my
22 client's blood found mixed in with the victim's blood on his
23 body?

24 MS. ABDI: Objection.

25 THE COURT: If you are aware.

Det. J. Cereghino - People - Cross

1019

1 A. No, I'm not aware.

2 Q. Would it be fair to say that if that had been
3 tested and found to be a match that you would have been made
4 aware of that as the investigating detective, right?

5 A. Yes, sir.

6 THE COURT: How long will you be?

7 MR. MILLMAN: You want to know for
8 scheduling, 15 to 20 minutes, I'm estimating.

9 THE COURT: Is this your last witness?

10 MS. ABDI: Yes.

11 THE COURT: Come on up here, counsel.

12 (A discussion was held off the record at the
13 bench outside of the hearing of the jury.)

14 THE COURT: All right, ladies and gentlemen,
15 2 o'clock. Don't discuss this case. I think I'm going
16 to get you out early today, and we you not working
17 tomorrow. So as far as tomorrow is concerned, you can
18 do whatever you want as long as it's legal. We'll see
19 you at 2.

20 (Whereupon, the jury exits the courtroom.)

21 THE COURT: All right, Mr. Millman, I want
22 you to know that my chambers will be open tomorrow to
23 you if you need me.

24 MR. MILLMAN: Judge, I appreciate that.

25 Thank you.

Det. J. Cereghino - People - Cross

1020

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THE COURT: 2 o'clock.

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(Whereupon, a luncheon recess was taken.)

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Det. J. Cereghino - People - Cross

1021

1 A F T E R N O O N S E S S I O N

2 THE CLERK: Recalling case on trial, People
3 of the State of New York versus Ulises Bonilla,
4 Indictment 202N of 2011. All parties are present
5 including the defendant and Spanish interpreter. There
6 are no jurors present.

7 (Whereupon, the witness resumed the witness
8 stand.)

9 THE CLERK: Let the record reflect the
10 witness is on the stand. Sir, you are reminded you're
11 still under oath.

12 THE WITNESS: Yes, sir.

13 COURT OFFICER: Jury entering.

14 (The jury enters the courtroom.)

15 THE CLERK: Let the record reflect the
16 presence of all jurors. Both sides consent to the
17 seating and waive a reading of the roll?

18 MS. ABDI: Yes.

19 THE CLERK: Counsel?

20 MR. MILLMAN: Yes.

21 THE COURT: Okay, Mr. Millman, continue your
22 cross-examination.

23 MR. MILLMAN: Certainly.

24 CROSS-EXAMINATION

25 BY MR. MILLMAN: (CONTINUED)

Det. J. Cereghino - People - Cross

1022

1 Q. Good afternoon, Detective.

2 A. Good afternoon, counsel.

3 Q. Detective, I wanted to talk about the knife that
4 was tested, that was recovered from the scene.

5 A. Yes.

6 Q. That was sent over for testing of the blood or
7 what appeared to be blood on the knife?

8 A. Yes, sir.

9 Q. And the blood was tested, and it was found to be a
10 match for the victim; is that correct?

11 A. Yes, sir.

12 Q. And another part of the reason that you wanted
13 that knife tested was that you suspected that the defendant,
14 my client, may have been bleeding; is that fair to say?

15 A. I'm sorry?

16 MS. ABDI: Objection.

17 THE COURT: That's sustained.

18 Q. Detective, did you advise anyone over at the
19 forensic bureau that you suspected that my client may have
20 been bleeding at the time of the incident?

21 MS. ABDI: Objection.

22 THE COURT: Did you advise them that?

23 THE WITNESS: No, I can't say I did, sir.

24 MR. MILLMAN: I'm going to ask to have this
25 marked I think Defendant's F for identification.

Det. J. Cereghino - People - Cross

1023

1 (Defendant's Exhibit F is marked for
2 identification.)

3 Q. Detective, you are being shown what's marked
4 Defendant's Exhibit F for identification. I'm just going to
5 ask you to take a look at that.

6 A. I haven't read the whole thing. But yes,
7 counselor?

8 Q. My question to you is does that reflect a meeting
9 that was held between yourself, Miss Sims and other members
10 of the forensic bureau?

11 MS. ABDI: Objection.

12 THE COURT: Does the written material
13 contained thereon have reference to your meeting with
14 the forensic bureau at the Nassau County Medical
15 Examiner's Office?

16 THE WITNESS: Yes, it does. But I don't even
17 know -- I'm not even certain who prepared this.

18 THE COURT: Well, we are not asking. He is
19 not asking you that. Does it have reference to that
20 meeting?

21 THE WITNESS: Yes, sir.

22 Q. And does that indicate that you had advised the
23 forensic bureau --

24 THE COURT: Objection sustained.

25 Q. Detective, does that refresh your recollection as

Det. J. Cereghino - People - Cross

1024

1 to whether or not you had advised the forensic bureau about
2 whether or not my client was bleeding?

3 A. Just give me a moment to finish reading it,
4 please.

5 Q. Please, take your time.

6 A. Counsel --

7 THE COURT: All he's asking you does it
8 refresh your recollection?

9 THE WITNESS: Yes, it does.

10 Q. And did you advise someone over in the forensics
11 bureau that you suspected my client may have been bleeding?

12 A. Just that it's a possibility.

13 Q. I said that, did you advise them that you
14 suspected he may be -- may have been bleeding?

15 A. I don't see that anywhere on here, sir. I may
16 have. I may have.

17 Q. I'm just directing your attention to the first
18 paragraph on that document.

19 A. Okay, yes.

20 Q. Now, Detective, other than what you testified
21 about, did you ever at any time learn that my client's
22 blood, skin fragments, sweat or saliva had been found on
23 anything else recovered from the scene other than what we
24 have talked about?

25 MS. ABDI: Objection.

Det. J. Cereghino - People - Cross

1025

1 THE COURT: All right, a lot of that is
2 hearsay. I am going to let -- give a little leeway on
3 having the detective testify as to what's in his file.
4 But make it very, very simple, and separate the
5 sentences.

6 MR. MILLMAN: Certainly, your Honor.

7 Q. Detective, would it be fair to say that as the
8 investigating detective in the case, you were the person in
9 charge of the investigation?

10 A. Yes, sir.

11 Q. And would it also be fair to say that as the
12 investigating detective, any evidence obtained in the course
13 of the investigation would have been communicated to you in
14 one form or another?

15 A. Yes.

16 THE COURT: Did there come a time that you
17 were aware of certain forensics residues of the
18 evidence were found in this particular case; is that
19 true?

20 THE WITNESS: Yes, sir.

21 THE COURT: What were those residues?

22 THE WITNESS: I believe there was blood found
23 in the car that came back to the defendant.

24 THE COURT: Anything else?

25 THE WITNESS: I believe --

Det. J. Cereghino - People - Cross

1026

1 THE COURT: If you know.

2 THE WITNESS: I don't believe there's
3 anything else, no.

4 THE COURT: Do you want to lead him on
5 anything else, counsel?

6 MR. MILLMAN: Just one moment, your Honor.
7 No, I actually -- that would satisfy me.

8 Q. Detective, am I correct that you had learned in
9 the course of your investigation that one or more witnesses
10 had seen a number of people getting in on the fight between
11 Armando and my client?

12 MS. ABDI: Objection.

13 THE COURT: Sustained.

14 Q. Am I correct in stating, Detective, that Nancy had
15 advised you that three other individuals had began to kick
16 and punch the victim Armando?

17 MS. ABDI: Objection.

18 THE COURT: Sustained.

19 Q. Detective, when you went to the scene that night,
20 can you describe the lighting conditions?

21 A. It was -- it was dark, but either before I got
22 there or right after I got there, we had the departmental
23 light truck come to illuminate a good portion of the area.
24 It didn't cover the entire area all the way down to 163, the
25 defendant's house where the knife was found against the

Det. J. Cereghino - People - Cross

1027

1 curb. It didn't go down that far. But with the aid of the
2 light truck, it wasn't too bad.

3 THE COURT: What's a light truck?

4 THE WITNESS: A light truck has numerous
5 lights on it that would illuminate an area.

6 THE COURT: Spotlights?

7 THE WITNESS: Yes, sir.

8 THE COURT: Large spotlights?

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay, go ahead.

11 Q. Detective, did you have one or more light trucks
12 at the scene during the time that you were there?

13 A. I believe we only had one, and it was there.

14 Q. And was that parked on the north portion or
15 northern portion of 180 Kinkel Street?

16 A. I believe it was, yes, sir.

17 Q. Now, Detective, did you have an opportunity to
18 actually stand on the front lawn of 180 Kinkel Street while
19 you were there?

20 A. Yes, sir.

21 Q. Now, am I correct in stating that just south of
22 180 Kinkel Street, there is an overhead street light?

23 A. Yes.

24 Q. A structure?

25 A. Right.

Det. J. Cereghino - People - Cross

1028

1 Q. Did you happen to notice if that was working when
2 you were there?

3 A. I honestly don't recall.

4 Q. And when you stood on the lawn of 180 Kinkel
5 Street, did you notice that the lights from 180 Kinkel
6 Street were set off and came on when you walked on the lawn?

7 MS. ABDI: Objection.

8 MR. MILLMAN: Judge, that goes right towards
9 the lighting conditions at the time.

10 THE COURT: Are you aware of any activating
11 time device that sets off lighting on 180 Kinkel
12 Street?

13 THE WITNESS: I don't recall whether there
14 were motion activated or timed. I don't recall the
15 lights.

16 Q. Do you recall seeing any lights coming from 180
17 Kinkel Street at any time?

18 MS. ABDI: Objection. What time?

19 MR. MILLMAN: While he was there, your Honor.

20 MS. ABDI: Objection. Relevance.

21 MR. MILLMAN: Relevance? It's the lighting
22 conditions to the murder scene, your Honor.

23 THE COURT: Just one second. Was -- you are
24 going to have to -- I'm going to let you get into the
25 area, but you are going to have to rephrase it, and you

Det. J. Cereghino - People - Cross

1029

1 do have different time periods here.

2 MR. MILLMAN: Certainly, certainly.

3 Q. Detective, when you were present at the scene on
4 the night of September 28th of 2010, approximately how many
5 times did you walk on the lawn of 180 Kinkel Street?

6 A. Two or three times maybe.

7 Q. On any of those occasions, did you notice a light,
8 and I'm excluding any lights that may have been inside the
9 house, a light shining on or illuminating the front yard of
10 that property?

11 A. I vaguely recall there being a light by the front
12 of the house.

13 Q. Now, you spoke to a number of witnesses --
14 withdrawn.

15 You spoke to witnesses that advised you that
16 Misael had pointed a gun at members of the crowd; am I
17 right?

18 MS. ABDI: Objection.

19 THE COURT: Sustained.

20 Q. Detective, did you ever investigate Misael for
21 aiding and abetting a murder in connection with this
22 incident?

23 MS. ABDI: Objection.

24 MR. MILLMAN: Your Honor, it goes directly
25 toward the detective's dealings with Misael and whether

Det. J. Cereghino - People - Cross

1030

1 or not he would have had reason to look further into
2 other suspects. I do believe I am permitted to get
3 into this, Judge.

4 THE COURT: I'm going to read to you, ladies
5 and gentlemen, now a section of law. It says criminal
6 liability for the conduct of another. When one person
7 engages in conduct which constitutes an offense,
8 another person is criminally liability for such conduct
9 when, acting with the mental culpability required for
10 the commission thereof, he solicits, requests,
11 commands, importunes or intentionally aids such person
12 to engage in such conduct.

13 Now, this is your final judgment, because you
14 are the trier of the facts. But if you determine on
15 all of the evidence in this case that Berrios fired a
16 shot not simply to have a one-on-one confrontation but
17 fired a shot to prevent other people aiding the
18 deceased, then an inference may be drawn if he had the
19 intent to kill the deceased that he was aiding and
20 abetting the defendant in this case by not allowing
21 people to come to the aid of the deceased.

22 It's a very difficult concept, but one, you
23 must have the intent, you must act with the same mental
24 state as the primary actor and as a result of that
25 having that culpability, you solicit, request,

Det. J. Cereghino - People - Cross

1031

1 importunes or intentionally aids such person to engage
2 in such conduct.

3 Is that where you are going, counsel?

4 MR. MILLMAN: Yes, in part, your Honor.

5 THE COURT: Then I'll let you get into it.

6 CROSS-EXAMINATION

7 BY MR. MILLMAN: (CONTINUED)

8 Q. Detective, from speaking with Mr. Berrios and the
9 other witnesses, did you conclude that Mr. Berrios had held
10 out a handgun and prevented others from entering into what
11 was happening between Armando Villatoro and my client?

12 MS. ABDI: Objection.

13 A. Yes, sir.

14 THE COURT: Sustained.

15 Q. And you never did --

16 THE COURT: By the way, it's up to you to
17 conclude that if you do. You're the finder of the
18 facts.

19 Q. Detective, who was the lead detective on the rape
20 charge?

21 THE COURT: If you know.

22 A. Subsequently it was assigned to Detective Trujillo
23 from the Special Victim's Squad.

24 Q. But initially would it be fair to say that you
25 were in charge of it?

Det. J. Cereghino - People - Cross

1032

1 A. No, I wouldn't say that.

2 Q. You were involved in the investigation of it to
3 some extent; would that be fair to say?

4 A. When the possibility arose that 10 year old
5 Jennifer might have been sexually violated, I requested the
6 assistance of our Special Victims' Squad. That's their
7 field of expertise. And I was going to handle the homicide
8 end of it.

9 Q. Now, how long after you were working on the
10 homicide matter did the possibility arise to your knowledge
11 that she may have been a victim of a sexual offense?

12 A. The possibility arose almost immediately.

13 Q. Now, Detective, my client was arrested on November
14 26th of 2010, right?

15 A. Yes, sir.

16 Q. Am I correct in stating that he was never charged
17 with the rape until late January of 2011, right?

18 THE COURT: If you know.

19 A. I don't recall. I don't recall when the grand
20 jury was, no, sir. I'm not sure exactly when he was charged
21 with that crime.

22 Q. Would it be fair to say he was never charged with
23 the rape until it was presented to the grand jury?

24 THE COURT: By you.

25 A. Yes, I did not charge him with the rape.

Det. J. Cereghino - People - Cross

1033

1 Q. And to your knowledge, did anyone at the Nassau
2 County Police Department initiate a charge for it prior to
3 the time it was presented to the grand jury?

4 A. No.

5 MR. MILLMAN: That's all I have. Thank you.

6 THE COURT: Is that it?

7 MS. ABDI: I have nothing further.

8 THE COURT: You can step down.

9 THE WITNESS: Thank you, your Honor.

10 (The witness was excused.)

11 THE COURT: Any further witnesses?

12 MS. ABDI: Judge, I would just like to mark
13 two items into evidence.

14 THE COURT: Any objection, counsel?

15 MR. MILLMAN: I suspect what they are, but I
16 need to hear formally what it is that they are. I
17 don't think so.

18 MS. ABDI: I'll mark them for ID first. I
19 would like to have this marked as People's Exhibit 79
20 for identification. It's a registration record.

21 THE COURT: Have you seen that registration
22 record?

23 MR. MILLMAN: Yes, I have.

24 THE COURT: Any objection?

25 MR. MILLMAN: No.

1 THE COURT: That's received, marked without
2 objection.

3 (People's Exhibit 79 is received and marked
4 in evidence.)

5 THE COURT: With more particularity, that
6 concerns the automobile that was towed to the E
7 building and subsequently tested?

8 MS. ABDI: Yes, your Honor. I would like to
9 actually -- I can read from it in pertinent part with
10 your Honor's permission.

11 THE COURT: Let me see it. Read it all.

12 MS. ABDI: Do you want me to read the whole
13 front page, your Honor?

14 THE COURT: It's only a paragraph.

15 MS. ABDI: Okay. I, Maryanne Klein, do
16 hereby certify and authenticate that provided by Rule
17 4518 Subdivision A or C of the Civil Practice Law and
18 Rules that the registration abstract annexed hereto is
19 an exact reproduction of the original electronic record
20 of the New York State Department of Motor Vehicles
21 which has been delegated to my possession, custody and
22 control by the commissioner of motor vehicles. I
23 further certify that the original registration abstract
24 annexed hereto of plate EWB6427 was made in the regular
25 course of business of the New York State Department of

Proceedings

1035

1 Motor Vehicles, that it is the regular course of
2 business for the Department of Motor Vehicles to make
3 such record and that the entries in such record are
4 made at the time of the reported act, transaction or
5 event or within a reasonable time thereafter.

6 With respect to the plate EWB6427, it's a '98
7 Acura, gray. The registrant information is Diana
8 Bonilla with address of 163 Kinkel Street, Westbury,
9 New York.

10 THE COURT: You have another exhibit that you
11 wish to introduce?

12 MS. ABDI: Yes, your Honor. I would also
13 like to have this item marked as People's Exhibit 80.
14 It's a certified transcript of birth, birth
15 certificate.

16 THE COURT: I just want to know if there's
17 any objection.

18 MR. MILLMAN: No objection, your Honor.

19 THE COURT: Without objection, it's received.

20 (People's Exhibit 80 is received and marked
21 in evidence.)

22 THE COURT: That's the birth certificate of
23 who?

24 MS. ABDI: Jennifer Carolina Villatoro, in
25 part, date of birth, December 14th, 1999.

1 THE COURT: Any other witnesses by the
2 People?

3 MS. ABDI: Your Honor, the People rest.

4 THE COURT: People have rested their direct
5 case. As a consequence, as I said to you before, we
6 are going a little faster than I anticipated, and I
7 think it's to everybody's best interest that we adjourn
8 until Wednesday morning at which time we will continue
9 this particular case.

10 When I charge you, ladies and gentlemen, my
11 charge will be two parts. One is a general charge
12 concerning rules of law applicable to all criminal
13 cases. The second part is a charge containing the
14 rules of law applicable and pertinent to the counts in
15 this indictment which you are to deliberate on.

16 I don't know when I'm going to do this. I
17 don't know whether or not I can get all of this done by
18 Friday so that you may be able to start your
19 deliberations on Friday. A better course of action
20 would be to see how far we go, and if I can give you
21 these general rules of law on Friday and then the first
22 thing Monday morning, you can get the rules of law with
23 regard to the specifics of the indictment, that might
24 save a little time on Monday so you'll have more
25 deliberative time on Monday. I haven't decided what

Proceedings

1037

1 I'm going to do yet except to say we are proceeding
2 faster than I thought.

3 Remember the admonitions I have given you,
4 and I'll see you Wednesday at 9:30.

5 Personally, I have been asked by the court
6 officer that some of you are a little bit confused as
7 to what you may do tomorrow. You can do anything you
8 want. All I want is you back here at 9:30 on
9 Wednesday. It's as simple as that.

10 Is there a specific question anyone wants to
11 ask me?

12 A JUROR: I spoke with the other jurors, and
13 we were just concerned when we have to bring a document
14 to our job normally to indicate we were at jury duty,
15 it normally states the start date and the end date, or
16 are you going give us certain dates and not put
17 tomorrow's date? I would recommend --

18 THE COURT: Just one second. As far as I'm
19 concerned, I've continued this case until Wednesday,
20 and your jury service will be from the start of this
21 case until the end, including Tuesday. That's as far
22 as I'm concerned. Of course, someone else may scream
23 at me, but that's as far as I'm concerned.

24 (Whereupon, the jury exits the courtroom.)

25 MR. MILLMAN: Your Honor, I do have a motion.

Proceedings

1038

1 I don't know if you want to hear that now?

2 THE COURT: Why not?

3 MR. MILLMAN: Your Honor, I have an
4 application pursuant to Section 290.10 of the Criminal
5 Procedure Law for a trial order of dismissal. I
6 believe that the District Attorney's office has failed
7 to make out a case demonstrating that my client was the
8 one who had actually stabbed the victim here. There
9 was no -- not a single eyewitness was able to testify
10 to having seen the stabbing despite many people being
11 present. Additionally, there is --

12 THE COURT: I remember watching a movie a
13 long time ago.

14 MR. MILLMAN: Yes.

15 THE COURT: With Henry Fonda. He played
16 Abraham Lincoln in Lincoln's early days as a lawyer.
17 And Lincoln was saying he tried a case once, and he
18 asked a witness, did you see the victim's ear bitten
19 off? He says, I know it was bitten off. How do you
20 know it if you didn't see it? Because I saw the guy
21 spit it out.

22 Now, the answer seems to me this trial is
23 replete with testimony, if credited, that the defendant
24 and victim were fighting. No one else was in that
25 particular fight. The ability to be mobile would be

1 limited to roughly a minute. That testimony was from
2 the medical examiner after the major stab wounds.

3 Certainly the People have made out a prima
4 facie case, and your motion under the first count is
5 denied.

6 MR. MILLMAN: And I do have a motion with
7 regard to on the rape charge as well. I believe that
8 the evidence, particularly the evidence concerning
9 penetration, is insufficient as well. I believe that
10 aside from the fact that I believe that the victim's
11 testimony may even rise to the level of not being
12 credible as a matter of law, additionally she indicated
13 that she did not see the defendant's penis, and also
14 she had given numerous inconsistent statements to the
15 police about what happened.

16 So I'm also asking for a trial order of
17 dismissal with regard to the rape charge and the
18 related sexual offenses.

19 THE COURT: Well, the victim -- under the
20 law, sexual intercourse occurs upon penetration,
21 however slight. The victim testified to this, and the
22 examining pediatrician testified to this. Of course,
23 you can argue whether or not it was a penis or finger.
24 But that's up to the jury. Anything else?

25 MR. MILLMAN: No, your Honor.

Proceedings

1040

1 THE COURT: All right, I know you have a
2 problem with one witness.

3 MR. MILLMAN: Yes, your Honor.

4 THE COURT: And my chambers will be open to
5 you to facilitate your affectation of your right of
6 composery process, and I will do whatever I can to help
7 you tomorrow.

8 MR. MILLMAN: Would you mind if that be done
9 by order to show cause if I were to make that?

10 THE COURT: Will you be available tomorrow?

11 MS. ABDI: Yes.

12 THE COURT: You don't have to make it an
13 order to show cause. She's available tomorrow. Once
14 you have the paperwork, come down. We'll discuss it,
15 and if necessary, I'll sign it.

16 MR. MILLMAN: Thank you.

17 (Whereupon, the trial is adjourned to
18 December 14th, 2011.)
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STATE OF NEW YORK : NASSAU COUNTY

SUPREME COURT : PART 39

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Ind. No. 202N-11

ULISES BONILLA,

Defendant.

-----X

JURY TRIAL

December 14, 2011
262 Old Country Road
Mineola, New York

B E F O R E :

HON. GEORGE R. PECK,
Acting Supreme Court Justice

A P P E A R A N C E S :

HON. KATHLEEN M. RICE
Nassau County District Attorney
BY: ZEENA ABDI, ESQ., of Counsel
Assistant District Attorney
For the People

DANIEL L. MILLMAN, ESQ.
316A Main Street
Roslyn, New York 11576
For the Defendant

JOANNE HORROCKS, CSR
Senior Court Reporter

Proceedings

1042

1 THE CLERK: Case on trial, People of the
2 State of New York versus Ulises Bonilla, Indictment
3 202N of 2011. All parties present including the
4 defendant and the Spanish interpreter. There are no
5 jurors present at this time.

6 THE COURT: Does anyone want to put anything
7 on the record before we bring the jurors out?

8 MR. MILLMAN: Yes, your Honor. Just a couple
9 of things. First, I just want the record to reflect
10 that I have provided counsel with two pages of Rosario
11 with regard to the witnesses that I will be calling.
12 The first page is notes that I made while speaking to a
13 witness, and my writing is illegible.

14 I spoke with counsel beforehand. I advised
15 her of what it is I wrote. I can place it on the
16 record if that helps too.

17 THE COURT: Do you understand the notes?

18 MS. ABDI: Counsel had interpreted them for
19 me. I was just unclear as to the date that was being
20 spoken about in the notes.

21 MR. MILLMAN: Oh, okay. The date that was
22 being spoken about in the notes is the 28th. So it's
23 the date of the incident, but it's the afternoon,
24 before he went to the hospital. Let me just read --

25 THE COURT: Just one second. Is that

1 acceptable?

2 MS. ABDI: Yes.

3 THE COURT: She understands the notes. You
4 need not go any further.

5 MR. MILLMAN: And the second page is a
6 statement of Evan Grover, G-R-O-V-E-R.

7 The other item I want to place on the record
8 is that I had served a subpoena on Nassau University
9 Medical Center for records pertaining to Jennifer
10 Villatoro, I believe, covering a two-month period. I
11 have with counsel reviewed the records that were sent
12 in response to that subpoena, and they contain nothing
13 in addition to the records that were previously
14 provided by the District Attorney's office. So I just
15 wanted to make that clear also.

16 And I was also offering into evidence the
17 medical records of my client. I'll do that at the
18 appropriate time. I don't know if you would prefer
19 that it be marked and stipulated to now?

20 THE COURT: And you are talking about the
21 medical records allegedly occurring sometime before the
22 alleged altercation where he cut his finger?

23 MR. MILLMAN: No, the medical records
24 actually are a visit my client made to the hospital
25 sometime after he had injured his finger at work that

Proceedings

1044

1 day. It is before the incident occurred on the same
2 day --

3 THE COURT: But it's concerning a bruised
4 finger?

5 MR. MILLMAN: A cut, lacerated.

6 THE COURT: It has nothing to do with whether
7 or not he went to the hospital concerning any injuries
8 sustained in the altercation?

9 MR. MILLMAN: No. That's a different issue.
10 This pertains a visit to the hospital earlier. But
11 obviously in light of the issues with the handle having
12 his blood on it, that is the reason that I am
13 introducing it.

14 THE COURT: Okay.

15 MS. ABDI: And I have no objection as far as
16 the authenticity of those medical records.

17 COURT OFFICER: Jury entering.

18 (The jury enters the courtroom.)

19 THE CLERK: Let the record reflect the
20 presence of the jurors. Both sides consent to seating
21 and waive a reading of the roll?

22 MS. ABDI: Yes.

23 MR. MILLMAN: Yes.

24 THE CLERK: Thank you.

25 THE COURT: All right, ladies and gentlemen,

1 I hope you had a pleasant day off. It won't -- I just
2 want to give you something now that would -- may affect
3 your schedules. It's not going to be too long from now
4 that you are going to be deliberating on this
5 particular case.

6 Now, during the course of the trial, we tried
7 to put no restrictions on your activity, which means if
8 you have a break and if you want to call your business,
9 if you want to do computer work or something like that,
10 we don't care. During deliberations, that will not be
11 the case. During deliberations, you will not have any
12 contact with the outside at all during deliberations.
13 And as an incident to that, our court officers will
14 take any cell phones that you might have. You will not
15 be in cognito. If there is an emergency, we will get
16 to you. Honey, when you come home tonight, bring the
17 dry cleaning is not an emergency.

18 Do you have any witnesses?

19 MR. MILLMAN: Yes, your Honor.

20 THE COURT: We're on the defendant's case
21 now.

22 MR. MILLMAN: At this time the defendant
23 calls Ferman Nunez.

24 THE COURT: Before we go any further, do you
25 speak English?

Proceedings

1046

1 THE WITNESS: A little bit. If you have a
2 translator, that's good.

3 THE COURT: How long will it take to get your
4 equipment?

5 THE INTERPRETER: I'm sorry?

6 THE COURT: How long will it take to get your
7 equipment?

8 THE INTERPRETER: I have to get to the office
9 and back.

10 THE COURT: Go get it.

11 We are going to give you your oath now that
12 the interpreter here is.

13 F E R M A N N U N E Z, a witness called on behalf of the
14 Defense, after having been first duly sworn by the
15 Clerk of the Court, was examined and testified upon his
16 oath through the interpreter as follows:

17 THE CLERK: In a loud, clear voice, please
18 state your name, spell your last.

19 THE WITNESS: Ferman Nunez.

20 THE CLERK: Spell your last name.

21 THE WITNESS: Nunez, N-U-N-E-Z.

22 THE CLERK: And county of residence?

23 THE WITNESS: Nassau.

24 DIRECT EXAMINATION

25 BY MR. MILLMAN:

F. Nunez - Defense - Direct

1047

1 Q. Good morning, Mr. Nunez. Mr. Nunez, where do you
2 currently work?

3 THE INTERPRETER: I didn't hear that.

4 Q. Where do you currently work?

5 A. 994 Prospect Avenue, Westbury, New York.

6 Q. And what is the name of the business there?

7 A. Westbury Deli, Inc.

8 Q. Are you the owner?

9 A. Yes.

10 Q. Were you the owner on September 28th of 2010?

11 A. Yes.

12 Q. Does the -- withdrawn.

13 On September 28th, 2010, did your deli contain a
14 video camera?

15 A. Yes.

16 Q. And are you the one who has worked that video
17 camera?

18 A. Yes.

19 Q. And was it in operating condition on September
20 28th of 2010?

21 A. Yes.

22 Q. And you have used that video camera to record
23 images within the deli?

24 A. Yes.

25 Q. And have you seen on prior occasions that the

F. Nunez - Defense - Direct

1048

1 video camera accurately depicts the deli and what's taking
2 place within the deli at the time?

3 A. Yes.

4 Q. And the video created a tape or recording from
5 what is recorded; is that correct?

6 A. Yes.

7 Q. And does the tape itself or the result, the
8 recording itself, contain an image of the date and time?

9 A. Yes.

10 Q. And have you determined that the recording
11 accurately depicts the date and time that are reflected on
12 the recording compared to the time that it's being recorded?

13 A. Yes.

14 MR. MILLMAN: Your Honor, may we approach
15 just for a moment?

16 THE COURT: You don't have to approach. At
17 this particular time, do you wish to introduce a tape?

18 MR. MILLMAN: Yes.

19 THE COURT: Have you consented to this, or do
20 you need to have the witness view the tape to
21 authenticate it?

22 MR. MILLMAN: My understanding, Miss Abdi
23 will let me know if I am wrong, we had stipulated, but
24 I will let her speak.

25 THE COURT: If you want to introduce the tape

F. Nunez - Defense - Direct

1049

1 by consent, fine. If you want the witness to
2 authenticate the tape, that's fine too. Show it to the
3 witness. Turn the TV monitor around so it cannot be
4 shown to the jury. There's no audio on that, I assume?

5 MR. MILLMAN: That's correct. But first I
6 would inquire as to whether or not counsel would
7 stipulate this into evidence.

8 MS. ABDI: Judge, I would just like him to
9 just make sure we're talking about the same video. I
10 would like him to just look at the video.

11 THE COURT: How long did that take?

12 MR. MILLMAN: I believe a minute.

13 THE COURT: Okay. Mark the tape for
14 identification.

15 (Defendant's Exhibit G is marked for
16 identification.)

17 THE COURT: I don't want to excuse the jury
18 unless it's absolutely necessary. Have him view the
19 tape and turn the monitor around. Do you know what I
20 am talking about? So the jury can't see.

21 MS. ABDI: I know what you are talking about.

22 THE COURT: Or turn the TV off.

23 MS. ABDI: I'll have him watch on the laptop.

24 THE COURT: I want you to go over there.

25 THE WITNESS: To see if that's my deli?

F. Nunez - Defense - Direct

1050

1 THE COURT: Well, yes.

2 Q. I'm going to ask you to take a look at what's been
3 marked as, I believe, it's Defendant's G for identification.
4 Do you see pretty much what's depicted there?

5 A. Yes.

6 Q. Without talking about what's depicted within the
7 image, do you recognize the image?

8 A. The image is of the store, yes, but not the
9 people.

10 Q. And that a fair and accurate representation of the
11 recording that is made from the surveillance camera that you
12 have within the deli?

13 A. Can you repeat that?

14 Q. Certainly. Is that a fair and accurate
15 representation of the recording made from your surveillance
16 camera in the deli?

17 A. Yes.

18 Q. And is the date and time depicted on that?

19 A. Yes.

20 Q. And is that the way the date and time appears on
21 recordings that you have reviewed of recordings made at your
22 deli?

23 A. Yes.

24 Q. And what is the time period that -- withdrawn.
25 What is the date that's indicated?

F. Nunez - Defense - Direct

1051

1 A. 9-28.

2 Q. Do you see a year?

3 A. 2010.

4 Q. And what is the time stamped that's depicted on
5 that tape as of the time?

6 A. 21 would be -- what time would that be?

7 THE COURT: 21? 9 p.m.

8 Q. And that's 21:00; is that correct?

9 A. Yes.

10 Q. And what is the time depicted -- first, what is
11 the date depicted at the end of this recording?

12 A. 9-29.

13 Q. Of 2010?

14 A. Yes.

15 Q. And the recording contains that entire period of
16 time?

17 A. Yes.

18 MR. MILLMAN: Your Honor, at this time I
19 would move it into evidence.

20 THE COURT: People?

21 MS. ABDI: Just one question.

22 VOIR DIRE EXAMINATION

23 BY MS. ABDI:

24 Q. The last time period on that tape is 12:28 a.m. on
25 9-29; is that correct?

F. Nunez - Defense - Direct

1052

1 A. Yes.

2 MS. ABDI: I have no objection.

3 THE COURT: All right, it is received without
4 objection.

5 Now, what is the purpose of introducing the
6 tape at this particular time?

7 MR. MILLMAN: Your Honor, the purpose is
8 related and subject to connection through another
9 witness.

10 THE COURT: That's what I wanted to get.
11 It's subject to connection through another witness.
12 Okay. Do you have anything else of this witness?

13 MR. MILLMAN: No.

14 THE COURT: Do you have any cross?

15 MS. ABDI: No.

16 THE COURT: Thank you, sir.

17 THE WITNESS: Okay, thank you.

18 (Defendant's Exhibit G, previously marked for
19 identification, is received and marked in evidence.)

20 THE COURT: Next witness.

21 MS. ABDI: Defendant calls Diana Bonilla.

22 THE WITNESS: Hello.

23

24

25

D. Bonilla - Defense - Direct

1053

1 D I A N A B O N I L L A, a witness called on behalf of the
2 Defense, after having been first duly sworn by the
3 Clerk of the Court, was examined and testified upon her
4 oath as follows:

5 THE CLERK: In a loud, clear voice, please
6 state your name and spell your last.

7 THE WITNESS: Diana Bonilla, B-O-N-I-L-L-A.

8 THE CLERK: And your county residence?

9 THE WITNESS: 163 Kinkel Street.

10 THE CLERK: Just your county residence.

11 THE WITNESS: Nassau.

12 THE COURT: Based upon what I've heard so
13 far, I assume you have no trouble understanding
14 conversational English; is that true?

15 THE WITNESS: Yes.

16 THE COURT: Good.

17 DIRECT EXAMINATION

18 BY MR. MILLMAN:

19 Q. Good morning, Miss Bonilla.

20 A. Good morning.

21 Q. Miss Bonilla, where do you currently reside?

22 Where do you live?

23 A. 163 Kinkel Street in Westbury, New York.

24 Q. And with whom do you reside there?

25 A. With my father, my father, my sister-in-law and

D. Bonilla - Defense - Direct

1054

1 her kids.

2 Q. Who is your sister-in-law?

3 A. My brother's girlfriend.

4 Q. And what is her name?

5 A. Zeida.

6 Q. What is her last name?

7 A. Bonilla.

8 Q. And even though her last name is Bonilla, no
9 relation; is that correct?

10 A. Yes.

11 Q. And you said and her children?

12 A. Yes.

13 Q. What are their names?

14 A. Abbey, Lisa, Dora and Andrea.

15 Q. Who is Andrea's father?

16 A. Ulises.

17 Q. Ulises?

18 A. Yes.

19 Q. And how old is Andrea?

20 A. Five.

21 Q. Ulises Bonilla is your brother; is that correct?

22 A. Yes.

23 Q. And just, now, a formality, but can you just point
24 him out and identify him?

25 A. Right there, the blue shirt.

D. Bonilla - Defense - Direct

1055

1 MR. MILLMAN: I ask the record to reflect the
2 identification of the defendant.

3 THE COURT: Yes.

4 Q. How long have you lived at 163 Kinkel Street?

5 A. I don't know exactly. Maybe like 12 or 13 years.

6 Q. And do you know somebody named Jennifer Villatoro?

7 A. Yes, I do.

8 Q. And how do you know her?

9 A. She lives up the block from me, like five houses
10 down.

11 Q. And do you know how old she is?

12 A. Not exactly.

13 Q. Do you also know Nancy?

14 A. Yes, I do.

15 Q. And where -- do you know Jennifer Villatoro's
16 address?

17 A. No, I don't, not exactly the address.

18 Q. How many houses from you is her house located?

19 A. About five.

20 Q. During the summer of 2010, how often did you see
21 Jennifer Villatoro?

22 A. Well, I always used to see her outside. She will
23 be outside playing or riding a bike or something.

24 Q. With whom would she be playing?

25 A. I believe it's her brother and some other kid. I

D. Bonilla - Defense - Direct

1056

1 don't know his name.

2 Q. Anybody else?

3 A. Um-um.

4 THE COURT: Is that a no?

5 THE WITNESS: No, yes.

6 THE COURT: Yes, it's a no?

7 THE WITNESS: Yes, it's a no.

8 Q. Where do you see her playing?

9 A. By in front of her house down the block.

10 Q. Anywhere else?

11 A. No.

12 Q. And when generally did you see her playing around
13 the block near her house during the summer of 2010?

14 A. When?

15 Q. Yes, what time of day?

16 A. In the daytime, afternoon.

17 Q. And what, if any, interaction did you observe
18 between your brother Ulises and Jennifer Villatoro during
19 the summer of 2010?

20 A. None.

21 Q. Did you see them say hi to each other from time to
22 time?

23 A. Once in awhile hi or bye, you know, if we see her
24 pass by the house or something.

25 Q. Did you ever observe her speaking to your brother

D. Bonilla - Defense - Direct

1057

1 in any extended conversation, and by extended, I mean more
2 than five minutes long?

3 A. No, I never seen them.

4 THE COURT: How old are you?

5 THE WITNESS: How old am I? Nineteen.

6 THE COURT: In the summer of 2010, did you
7 have an occupation, or did you go to school?

8 THE WITNESS: Yes, I did.

9 THE COURT: Which one?

10 THE WITNESS: I went to BOCES for
11 cosmetology.

12 Q. Miss Bonilla, I want to direct your attention to
13 September 24th of 2010.

14 A. Okay.

15 Q. Where were you at 4:30 p.m. on that day?

16 A. I believe I was home.

17 Q. Let me just take you back. Ten minutes prior to
18 that time, 20 after 4, where were you?

19 A. I was going to pick up one of my friends.

20 Q. Now, at 4:30 --

21 THE COURT: When he asked you where were you
22 at 4:30. You said, I believe I was home. Believe is a
23 common term. Are you sure?

24 THE WITNESS: I wasn't sure if I was home,
25 but from what I remember, I think I was home.

D. Bonilla - Defense - Direct

1058

1 THE COURT: Okay.

2 Q. And who was there with you at 4:30 p.m. on
3 September 24th?

4 A. My brother was home.

5 Q. Did you observe how he got home?

6 A. Yes, I did.

7 Q. What did you observe?

8 A. Um, Zeida dropped him off.

9 Q. And how did Zeida drop him off?

10 A. In her car.

11 Q. What kind of car does she have?

12 A. She drives a Honda. It's like a van.

13 Q. And where were you at the time that you observed
14 her dropping him off?

15 A. In my living room in the computer.

16 Q. And does that living room have a window?

17 A. Yes, it does.

18 Q. Does that window face out to the front, from the
19 street?

20 A. Yes, it does.

21 Q. At that time before -- immediately before you
22 observed your brother being dropped off, who was home with
23 you?

24 A. Just myself.

25 Q. What happened next?

D. Bonilla - Defense - Direct

1059

1 A. Um, he went upstairs to his room to change, and we
2 was going to go to the tattoo shop.

3 Q. Let me just stop you for a moment. His room is on
4 what floor of the house?

5 A. Second floor.

6 Q. Where the living room is, is that on the first
7 floor?

8 A. Yes, it was. Yes, it is.

9 Q. Now, if someone were to walk from Ulises' bedroom
10 and leave the house, how many different exits can someone
11 take to do that?

12 A. Two.

13 Q. Can you tell me where they are?

14 A. One's through the kitchen and one's through the
15 front door. But in order for him to leave out either one,
16 he has to pass through the living room.

17 Q. That's what I was going to ask you. In order for
18 him to exit through the kitchen door, where would he have to
19 pass in relation to where you were?

20 A. Right in front of me.

21 Q. And when you say in front of you, where you were
22 facing?

23 A. Yeah.

24 Q. In order for him to exit through the front door
25 leaving from his bedroom, where would he have to pass in

D. Bonilla - Defense - Direct

1060

1 relation to where you were?

2 A. Through the living room.

3 Q. Where you were facing?

4 A. Yeah.

5 Q. Now, did there come a time when you left your
6 home?

7 A. No.

8 Q. Well, I'm referring to --

9 A. Talking about after?

10 Q. Yes.

11 A. Okay, yes.

12 Q. What time was it that you left?

13 A. Around 4:35, 4:36, at that time I left my home, he
14 went with me.

15 THE COURT: All right, so you are using you
16 in the plural?

17 MR. MILLMAN: Well, originally I was asking
18 just her.

19 THE COURT: Are you using you in the plural?

20 MR. MILLMAN: Yes, your Honor.

21 THE COURT: Okay.

22 Q. So you and Ulises left at that time?

23 A. Yes.

24 Q. In between the time that you observed Ulises
25 arrive home and the time that you left with Ulises, did you

D. Bonilla - Defense - Direct

1061

1 ever see Ulises pass in front of you?

2 A. No.

3 Q. And did you ever see him leave the house?

4 A. No.

5 Q. And how was it that you left the house with
6 Ulises?

7 A. What do you mean how was it?

8 Q. By what means did you leave the area of your home,
9 car, by foot?

10 A. Oh, in a car, my car.

11 Q. And what kind of car did you have?

12 A. Acura Integra.

13 Q. What color?

14 A. Gray.

15 Q. Are you familiar with New Cassel park?

16 A. Yes, I am.

17 Q. Is that also known as Bunkyreid Park?

18 A. Yeah, I think that's the name of it. I know it by
19 New Cassel park.

20 Q. Where is it located?

21 A. Like a block away from our house.

22 Q. What streets border it; do you know?

23 A. Broadway and Railroad.

24 Q. How far would it take someone to walk from 163
25 Kinkel Street to the closest portion of New Cassel park?

D. Bonilla - Defense - Direct

1062

1 A. Less than five minutes maybe.

2 Q. And have you, yourself, been there before?

3 A. Yes, I have.

4 Q. And many occasions?

5 A. Yeah, all the time in the summertime.

6 Q. And have you been there on many occasions on
7 Friday afternoons?

8 A. Yes, I have.

9 Q. What, if any, security have you observed when you
10 have gone there on Friday afternoons?

11 THE COURT: What do you mean by that?

12 MR. MILLMAN: Security personnel.

13 THE COURT: Okay.

14 A. There's a couple.

15 Q. How many security personnel?

16 A. About maybe four.

17 Q. And are these security personnel uniformed?

18 A. Yes, they have light blue T-shirts they always
19 wear.

20 Q. And did you observe this uniform security
21 personnel, you know, between the hours of 4 p.m. and 7 p.m.
22 on Friday nights from time to time?

23 A. Yeah. They are always there.

24 MS. ABDI: Objection.

25 THE COURT: Basically what you are saying on

D. Bonilla - Defense - Direct

1063

1 prior occasions, you observed security personnel at the
2 park during that particular time?

3 THE WITNESS: Yes.

4 Q. And Miss Bonilla, you said about four. I take it
5 they weren't all in the same immediate area?

6 A. I know they are always there because usually when
7 I used to go to the park, I would see them there. And they
8 were my security guards from my school that I attended
9 before.

10 Q. What I was asking specifically before is the
11 security guards that you observed on these occasions, were
12 they spread out throughout --

13 A. Yes.

14 Q. Let me finish the question. Were they spread out
15 throughout the park, altogether or something else?

16 A. No, spread out through the whole park.

17 Q. Were they walking around or just standing?

18 A. No, walking around.

19 Q. When you exited your home, and I'm taking you back
20 to the time you left your home with Ulises --

21 A. Okay.

22 Q. -- did you both get in the car?

23 A. Yes, we did.

24 Q. Where were you going at that time?

25 A. I was going to pick up a friend. Her name is

D. Bonilla - Defense - Direct

1064

1 Xiomara.

2 Q. That Xiomara Tursio?

3 A. Yes.

4 Q. And did there come a time where you arrive at
5 Xiomara Tursio's home?

6 A. Yes.

7 Q. In between the time that you left your home in the
8 vehicle with Ulises and the time that you arrive at Xiomara
9 Tursio's home, did you make any stops?

10 A. No, I did not.

11 Q. What happened when you arrived at Xiomara's home?

12 A. Just called her, told her I was there, and she got
13 into the car, and we left.

14 Q. And when you say we left, you are talking about
15 yourself, Ulises and Xiomara?

16 A. Xiomara, yes.

17 Q. Where did you go?

18 A. We went to the tattoo shop.

19 Q. Did you make any stops along the way?

20 A. No, we didn't.

21 Q. About what time did you arrive at the tattoo shop?

22 A. Around maybe 5, 5:10, around that time.

23 Q. And by the way, what is the name of the tattoo
24 shop?

25 A. Tattoo You.

D. Bonilla - Defense - Direct

1065

1 THE COURT: Tattoo You?

2 THE WITNESS: Yeah, like Y-O-U.

3 Q. Do you know the address?

4 A. No, I do not. I know it's located in Carle Place.

5 Q. Carle Place?

6 A. Um-hum.

7 Q. And when you arrived there, did you enter Tattoo
8 You?

9 A. Yes, I did.

10 Q. Who did you enter Tattoo You with?

11 A. With Xiomara and my brother.

12 Q. Did you, Xiomara or your brother go anywhere from
13 the time that you exited the vehicle to the time that you
14 entered Tattoo You?

15 A. No.

16 THE COURT: So all three of you stayed there?

17 THE WITNESS: Yeah, we stood there. We were
18 all supposed to get a tattoo that day. We wasn't able
19 to.

20 Q. Had you been to Tattoo You before that time?

21 A. Yes.

22 Q. Had you ever been there with your brother before
23 that time?

24 A. No. That was my first time. I actually
25 introduced him to Evans.

D. Bonilla - Defense - Direct

1066

1 Q. And since that time, have you ever been there with
2 your brother?

3 A. No.

4 Q. So this is the only time?

5 A. That was the only time that he ever.

6 Q. Can you describe the conditions at Tattoo You?

7 A. Well, it's a very busy place, and especially on
8 Fridays or Saturdays or Sundays and weekdays, really it's
9 very packed in there.

10 Q. You made reference to someone named Evan?

11 A. Yes.

12 Q. Do you know Evan?

13 A. Yes. He's my tattoo artist.

14 Q. Do you actually know his last name?

15 A. No, I do not know.

16 Q. Can you describe him?

17 A. Like how he looks?

18 Q. His appearance.

19 A. He's light skin, tall, skinny. He has dreads.

20 Q. He has dreads?

21 A. Um-hum.

22 Q. And you made reference to speaking to Evan. What
23 did you discuss with Evan?

24 A. Well, we all wanted to get a tattoo, and my
25 brother wanted to finish one of his arms. So I introduce

D. Bonilla - Defense - Direct

1067

1 him to him, and I told him, you know, he want to get
2 something done. So he told us we could hang out for a
3 little bit. He was trying to see if he could tattoo us. So
4 we look around for little. We look at he has on the wall
5 some picture frames that we can go through. We were looking
6 at it for a little bit, and unfortunately, he wasn't --
7 couldn't tattoo us.

8 THE COURT: I'm sorry, unfortunately what?

9 THE WITNESS: He wasn't able to tattoo us.

10 Q. How long have you known Evan for?

11 A. I know him for a while now, maybe like three or
12 four years.

13 Q. What is his position at Tattoo You?

14 A. He tattoos.

15 Q. He is a tattoo artist?

16 A. Yeah.

17 Q. And at the time that you spoke with Evan, where
18 was Ulises?

19 A. Right next to me.

20 Q. Where was Xiomara?

21 A. Right next to me.

22 Q. What, if any, conversation took place at that time
23 between Ulises and Evan?

24 A. Well, I just introduced them and introduced each
25 other. Evan said what his name is, and he showed him his

D. Bonilla - Defense - Direct

1068

1 arm and told him he wanted to finish something. And Evan
2 started looking at the tattoos, and that was it.

3 Q. When you say he showed him his arm, correct me if
4 I am wrong, do you mean that Ulises showed Evan Ulises' arm?

5 A. Yeah.

6 Q. Do you recall Evan making any comment about
7 Ulises' tattoo?

8 A. I believe he did say something, but I don't
9 remember exactly the words what he said about the arm or
10 something.

11 Q. While you were at Tattoo You, what were you doing?

12 A. I'm sorry?

13 Q. While you were at Tattoo You that night, what were
14 you doing?

15 A. We was looking at the picture frames that he had
16 on the wall.

17 Q. What was Ulises doing?

18 A. He was with me and Xiomara, both of us.

19 Q. What was Xiomara doing?

20 A. We was all looking at the picture frames that he
21 has.

22 Q. Did there come a time that you left Tattoo You
23 that night?

24 A. Yeah.

25 Q. How would that come about?

D. Bonilla - Defense - Direct

1069

1 A. Well, Evans let us know that he wasn't gonna be
2 able to tattoo us that day.

3 Q. Did he say why?

4 A. Actually when we walk in, he was actually in the
5 middle of doing a tattoo. He said we could hang for a
6 little while and if he was able to tattoo us, but
7 unfortunately, he wasn't. So he let us know.

8 Q. What I was asking more specifically is at the time
9 that he indicated to you that he would not be able to tattoo
10 you, did he tell you why?

11 A. Yes, he did.

12 Q. And what was the reason?

13 A. Because he wasn't gonna be done with the tattoo
14 that he was doing any time soon.

15 Q. And what did you do at that time?

16 A. We left.

17 Q. When you say we, who?

18 A. Me, my brother and Xiomara.

19 Q. How long were you there for?

20 A. About two hours.

21 THE COURT: About two hours?

22 THE WITNESS: Yes.

23 Q. About what time was it when you left with Ulises
24 and Xiomara?

25 A. Around like 7, 7:05, 7:10, close.

D. Bonilla - Defense - Direct

1070

1 Q. During the time that you were there, did Ulises
2 ever leave your sight?

3 A. No, he did not.

4 Q. After you left tattoo you, where did you go?

5 A. Home.

6 Q. And who went with you?

7 A. My brother and Xiomara. We all went to my house.

8 Q. Did you make any stops along the way?

9 A. No.

10 Q. I want to direct your attention to the afternoon
11 of September 28th of 2010, and more specifically,
12 approximately 5 o'clock p.m. or around that time. What were
13 you doing?

14 A. I was getting ready to go to school.

15 Q. Who do you go to school with?

16 A. Xiomara.

17 Q. And do you pick her up?

18 A. Yes, I used to pick her up.

19 Q. Where does Xiomara sit? Where did Xiomara sit
20 when you would pick her up for school?

21 A. Front seat.

22 Q. Had she spoken with Ulises about that on prior
23 occasions?

24 MS. ABDI: Objection.

25 THE COURT: Did the three of you ever get in

D. Bonilla - Defense - Direct

1071

1 the car together?

2 THE WITNESS: Yes.

3 THE COURT: Who sat where?

4 THE WITNESS: Xiomara always sat in the front
5 seat.

6 THE COURT: And your brother?

7 THE WITNESS: Back.

8 THE COURT: Okay.

9 Q. And those were on occasions that you drove
10 Xiomara?

11 A. Yeah.

12 Q. Did you have a conversation with your brother
13 Ulises around that time?

14 A. Yes, I did.

15 Q. Where did that conversation take place?

16 A. Right in front of my step by the door.

17 Q. When you say the step, this is your home, 163
18 Kinkel Street?

19 A. My house, um-hum.

20 Q. At the time that you had the conversation with
21 your brother, what, if anything, did you notice about his
22 physical condition or appearance?

23 A. Um, he was actually bleeding from his hand.

24 Q. He was bleeding from his hand?

25 A. Yes.

D. Bonilla - Defense - Direct

1072

1 Q. Do you recall which hand it was?

2 A. No, I don't remember.

3 Q. Do you recall how much blood there was?

4 A. A lot, but I don't remember which hand.

5 Q. And what conversation did you have with Ulises at
6 that time?

7 A. He actually wanted me to take him to the hospital.
8 So I gave him my car keys for him to get into the car, and I
9 told him to wait for me. And he was outside for about five
10 or six minutes.

11 Q. Let me just stop you for a moment. After you gave
12 him the keys to your car, did you observe him do anything?

13 A. Yeah. He got into the car.

14 Q. Did you observe that?

15 A. Yes, I did.

16 Q. Where were you when you observed that?

17 A. I was in the front of the door of my house.

18 Q. Where in the car did Ulises get in?

19 A. He sat in the back seat from the passenger.

20 Q. The rear passenger?

21 A. Yeah, not where I drive, the one on the side.

22 Q. Where was the car parked at that time?

23 A. My driveway.

24 Q. Facing in which direction?

25 A. Um, facing the front to the back of my house.

D. Bonilla - Defense - Direct

1073

1 Q. So in other words, just to be clear for the jury,
2 the back of the car would be closer to the street, and the
3 front of the car would be closer to your house?

4 A. Yeah, um-hum.

5 Q. What, if any, sounds did you hear coming from the
6 car after that?

7 A. Well, he was beeping because he was trying to rush
8 me, and I wasn't ready.

9 Q. And how many times did you hear him honk?

10 A. About twice.

11 Q. And at that time, when you heard the honking, you
12 weren't looking at him at that time?

13 A. Was I looking at him?

14 Q. At that particular time, could you see if he was
15 reaching through to honk?

16 A. No, I didn't see. But I did come out, and I told
17 him to hold on.

18 Q. You are smiling. What was it that you said to
19 him, if you recall?

20 A. I mean I don't want to -- I told him just to hold
21 on, that I was gonna be out.

22 Q. Those were the words that you used?

23 A. Not exactly but --

24 Q. We're all grown-ups here. Just to the extent that
25 you recall.

D. Bonilla - Defense - Direct

1074

1 A. I told him to hold the fuck up, excuse my
2 language.

3 Q. What happened next?

4 A. I'm sorry?

5 Q. What happened next?

6 A. Um, he was honking that he wanted me to rush me to
7 come out. When I came out, he wasn't there anymore.

8 Q. And what did you do at that time?

9 A. I went to pick up Xiomara, and I went to school.

10 Q. Now --

11 THE COURT: He wasn't there at that time?

12 THE WITNESS: When I picked him up?

13 THE COURT: Did you take your car to pick up
14 Xiomara?

15 THE WITNESS: Yes.

16 THE COURT: So if he left, he left in another
17 vehicle?

18 THE WITNESS: I didn't see if he left in
19 another vehicle.

20 Q. When you saw Ulises -- withdrawn.

21 Is Ulises right-handed?

22 A. Huh?

23 Q. Is Ulises right-handed?

24 A. I don't know if he is. Never really paid
25 attention to what hand he writes with.

D. Bonilla - Defense - Direct

1075

1 Q. I just want to ask you to take a look at what's
2 been marked as Defendant's G into evidence.

3 THE COURT: You can now put that on the
4 screen.

5 MR. MILLMAN: Yes, your Honor. I just want
6 to find the spot that I will be asking her about.

7 Your Honor, I ask if the witness could step
8 down.

9 THE COURT: Step down.

10 THE WITNESS: Sure.

11 Q. I'm just going to ask you to stand just about here
12 because I'm going to ask you to look at the screen. Now,
13 Miss Bonilla, I'm going to play this exhibit. I'm going to
14 ask you to look at the top left screen, and I'm going to ask
15 you if you recognize anyone.

16 THE COURT: Now, can you isolate what you
17 play?

18 MR. MILLMAN: Only in terms of the time. I
19 cannot isolate the screen, the actual screen.

20 THE COURT: So isolate it with regard to
21 time.

22 MR. MILLMAN: Yes, that's what I'm doing,
23 your Honor.

24 Q. I'm going to ask you if you recognize the
25 individual --

D. Bonilla - Defense - Direct

1076

1 THE COURT: Just, please, isolate as to time.

2 MR. MILLMAN: I'm not sure if I'm following
3 exactly --

4 THE COURT: If this jury wants to have this
5 read back during deliberations, I'm not going to have
6 them go through hours worth of tape. Isolate it as to
7 time.

8 MR. MILLMAN: Okay.

9 Q. I'm going to ask you just tell us can you see the
10 time in the top right of the screen?

11 A. Yes.

12 Q. What does that indicate?

13 THE COURT: Counsel, what does it indicate?

14 MR. MILLMAN: 21:06:18.

15 A. Yes.

16 Q. And the date is December 28th, 2010?

17 A. Yes.

18 THE COURT: That's 9:06 p.m. and some
19 seconds, correct?

20 MR. MILLMAN: Yes.

21 Q. Miss Bonilla, the individual wearing something on
22 his head at the bottom left, do you recognize that person?

23 A. Yes. That's my brother.

24 Q. That's your brother?

25 A. Yes.

D. Bonilla - Defense - Direct

1077

1 Q. What is he wearing on his head?

2 A. A do-rag.

3 Q. And is that the individual that just entered the
4 deli?

5 A. Yes.

6 THE COURT: All right, you recognized him as
7 your brother. He was wearing a do-rag?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 Q. I'm going to ask you just watch this a little --
11 I'm going to ask you to watch the bottom right.

12 THE COURT: Can everybody see?

13 A JUROR: No.

14 THE COURT: Counsel, you have to position
15 yourself so the jury can see.

16 MR. MILLMAN: My apologies.

17 Q. I'm going to ask you to look at the bottom right.
18 Do you recognize anyone in the bottom right portion?

19 A. Yes, that's my brother.

20 Q. Do you see anything on his right hand?

21 A. Yes, I do.

22 Q. What is that?

23 A. Like a bandage.

24 Q. It's on his whole hand?

25 A. One of his fingers.

D. Bonilla - Defense - Direct

1078

1 Q. And this is at the time is 21:08:11?

2 A. Yes.

3 Q. I'm going to ask you to look again at the bottom
4 right, the individual?

5 A. My brother.

6 Q. And do you see something on his right hand?

7 A. Yes, I do.

8 Q. Is that the same bandage you were referring to?

9 A. Yes.

10 Q. I'm just going to ask you to look at the bottom
11 left and tell me if you see anyone you recognize. Do you
12 recognize anyone at the bottom left?

13 A. My brother.

14 Q. Do you see the individual -- point to where he is.

15 (The witness complied.)

16 MR. MILLMAN: Let the record reflect the
17 individual to the left of two individuals on the top of
18 the image that is on the bottom left.

19 THE COURT: She's identified her brother in
20 three or four different shots, correct?

21 MR. MILLMAN: Yes, your Honor. I just have
22 one more question before I have the witness step back
23 onto the stand.

24 Q. Do you recognize the individual in the red sweat
25 shirt on the bottom left?

D. Bonilla - Defense - Direct

1079

1 THE COURT: Who was the person in the red
2 shirt?

3 THE WITNESS: His name is Henry.

4 Q. Does he have a nickname?

5 A. Yes, he does.

6 Q. Can you tell us what that is?

7 A. We called him Nigger.

8 Q. You may step back onto the stand.

9 Miss Bonilla, I am now going to direct your
10 attention to that same day, September 28th of 2010 but later
11 on at approximately 10:20 p.m.

12 A. Okay.

13 Q. Where were you at that time?

14 A. Um, I was going -- I was getting home.

15 Q. And how were you getting home?

16 A. With my car.

17 Q. Same car you talked about before?

18 A. Yes.

19 Q. The Acura?

20 A. Yes.

21 Q. And what did you do with the car at that time?

22 A. I parked it in the driveway.

23 Q. And what did you do next?

24 A. When I got off the car, my mother was in front of
25 the house, and I usually take a luggage to school. So I

D. Bonilla - Defense - Direct

1080

1 took the luggage out of my car. And I heard screaming and
2 all whole commotion down the block.

3 Q. Let me stop you for a moment. You say you saw
4 your mother?

5 A. Um-hum.

6 Q. Where did you see your mother?

7 A. She was in front of my steps.

8 Q. What, if any, conversation did you have with her
9 at that time?

10 She just told me did I hear what was going on down
11 the block.

12 Q. You described a commotion. For the members of the
13 jury, tell us what you heard.

14 A. Screaming. They were banging something.

15 Q. When you say banging, any other way you could
16 describe that?

17 A. I don't know what they were banging, but maybe a
18 beer bottle from far.

19 THE COURT: That's just speculation on your
20 part at this particular time; is that correct? You
21 heard noises?

22 THE WITNESS: Yes.

23 THE COURT: You don't know what caused the
24 noises?

25 THE WITNESS: No, I do not know.

D. Bonilla - Defense - Direct

1081

1 Q. What did you do at that time?

2 A. I went up the block to see what was going on.

3 Q. When you say up the block, proceeding from 163
4 Kinkel Street --

5 A. Going towards --

6 Q. You have to wait until I finish. Proceeding from
7 163 Kinkel Street, were you heading towards Prospect Avenue
8 or towards Broadway?

9 A. Prospect Avenue.

10 Q. Is that in the direction of Jennifer Villatoro's
11 house?

12 A. Yes, it is.

13 Q. Tell us what you observed when you head up the
14 street.

15 A. I headed up the street, and when I got there,
16 there was a lot people fighting. There was people against
17 the car.

18 Q. Who did you see against the car?

19 A. I saw Henry.

20 Q. What was he doing?

21 A. He had someone against the car fighting.

22 Q. He was fighting with someone?

23 A. Yes.

24 Q. And did you see anybody else by the car?

25 A. I also see Misael.

D. Bonilla - Defense - Direct

1082

1 Q. What was Misael doing?

2 A. He was also fighting.

3 Q. Do you know the person he was fighting?

4 A. No, I do not know.

5 Q. Did Misael have a gun in his hand at that time?

6 A. No, he did not.

7 Q. Did he have anything in his hand?

8 A. No, I didn't see anything in his hand.

9 Q. What else did you observe?

10 A. I seen Armando hitting someone.

11 Q. He was hitting someone?

12 A. He had someone by the hair. He was kneeing him in
13 the face.

14 Q. So he got someone by the hair, and he was kneeing
15 him in the face?

16 A. Yes.

17 Q. At that time could you see who that individual
18 was?

19 A. No, I wasn't able to recognize who it was.

20 Q. What did you do at that time?

21 A. I -- at the time I screamed for them to stop
22 fighting, and I also screamed at Armando's wife and told her
23 to call the cops. I did not have my cell phone on me at the
24 moment, so I wasn't able to make a phone call.

25 Q. About how many people would you say were there at

D. Bonilla - Defense - Direct

1083

1 that time?

2 A. About seven.

3 Q. And did any of them have weapons?

4 A. Yes, they did have weapons.

5 Q. What weapons?

6 A. Um, I believe a pipe. You could say it's called a
7 pipe. And I saw bats, beer, beer bottles. Anything else
8 besides that?

9 Q. Did you observe people using these things?

10 A. Yes.

11 Q. On other people?

12 A. Yes.

13 Q. Did there come a time that you heard a loud sound?

14 A. Yes.

15 Q. What was that?

16 A. A gunshot.

17 Q. Where were you in relation to where you heard the
18 gunshot?

19 A. Um, I don't know, like facing --

20 THE COURT: Excuse me, where were you --
21 where was the gunshot emanating from when you heard it?

22 THE WITNESS: Like towards Prospect way. I
23 don't know how to explain it.

24 Q. And at the time that you heard the gunshot, what,
25 if anything, did you see Armando do?

D. Bonilla - Defense - Direct

1084

1 A. Well, when I heard the gunshot, everybody ran, and
2 I did see Armando walk to in front of his house.

3 Q. Now, when you heard the gunshot, did Armando and
4 this other individual stop fighting?

5 A. Yes, they did.

6 Q. What, if anything, did you notice about that other
7 individual at that time?

8 A. Of the individual Armando was --

9 Q. Yes.

10 A. What do you mean?

11 Q. Did you at that time see who it was that Armando
12 was fighting?

13 A. No.

14 Q. And after you heard the gunshot, what did you do?

15 A. I walked towards my house.

16 Q. When you say walked, what was the pace at which
17 you walked? Was it a walk, a run?

18 A. No, it was like I was speeding towards my house,
19 like speed walking towards my house. I wasn't like running,
20 but I was speeding towards.

21 Q. And was anybody else running or speed walking or
22 going with you as you were --

23 A. Misael was behind me and Henry.

24 Q. And where was Henry in relation to you?

25 A. He was behind me.

D. Bonilla - Defense - Direct

1085

1 Q. Did you see your brother at that time?

2 A. Yes, I did. He was in front of me. He had
3 already walked past like in front of me and over Misael and
4 Henry with some other guys which I didn't recognize who they
5 were.

6 Q. Did there come a time that you got to your house?

7 A. Yes.

8 Q. Now, when you were halfway between where the
9 fighting was and where the house is, what, if anything, did
10 you observe at that time?

11 THE COURT: Is this going to or coming from?

12 MR. MILLMAN: Coming from.

13 A. Can you repeat that for me?

14 Q. Sure. When you were halfway between the area in
15 which you saw the fighting and where your house is, what, if
16 anything, did you observe?

17 A. There were still people behind.

18 Q. At that time did you observe Armando?

19 A. He was in front of his house already when I
20 observed him.

21 Q. And what was he doing at that time?

22 A. Well, I seen him walk to his house and then just
23 seen him like dropped.

24 Q. At the time at which you saw him walking, was that
25 when you were halfway between where the fighting was?

D. Bonilla - Defense - Direct

1086

1 A. Yeah.

2 Q. And you say saw him drop?

3 A. Yes, I did.

4 Q. From the time that you heard the gunshot to the
5 time that you look back and saw Armando walking on the lawn
6 when you were halfway to your house, did you see anything
7 that was happening back at Armando's house during that time?

8 A. There was still people there. I don't know if
9 they were fighting. But there was still a lot of people at
10 the same spot where we had been before.

11 Q. But what I'm asking more specifically is between
12 the time that you began to head in the direction of your
13 house and the time that you were halfway there and turned
14 around, between that time, were you looking ahead of you, or
15 were you looking behind you?

16 A. I looked behind me for a little bit to see what
17 was going on before, and then I just kept going away
18 straight home.

19 Q. And would it be fair to say that much of the time
20 that you were walking, you weren't looking where you were
21 going?

22 A. Yes.

23 Q. And would it be fair to say that you didn't see
24 everything that was happening?

25 A. Yes.

D. Bonilla - Defense - Direct

1087

1 Q. What happened next?

2 A. What happened next when I got to the house?

3 Q. Yes.

4 A. Well, my mother was screaming. She wanted to know
5 what was going on. And, you know, she told my brother to
6 get into the house.

7 THE COURT: She told what?

8 THE WITNESS: My brother to get into the
9 house, told me and my brother to get in the house.

10 Q. Did your brother listen?

11 A. No, we never listen to her, so we didn't listen to
12 her.

13 Q. Where did you go at that time?

14 A. My house.

15 Q. And what did you?

16 A. I got into my car.

17 Q. Where in your car?

18 A. Where in my car?

19 Q. Which seat?

20 A. The driver's seat.

21 Q. Was there anyone else that got into your car at
22 that time?

23 A. Yes.

24 Q. Who?

25 A. My brother.

D. Bonilla - Defense - Direct

1088

1 Q. Where did he get into your car?

2 A. He got in the front seat.

3 Q. Front passenger?

4 A. Yes.

5 Q. Who else got into your car?

6 A. Misael.

7 Q. Where did he get into the car?

8 A. He got behind the passenger seat, behind not where
9 I drive, but the next one behind it.

10 Q. The back seat?

11 A. The back seat, yes.

12 Q. Who, if anyone else, got into your car?

13 A. Henry got into my car and two other persons which
14 I don't know them.

15 Q. Where did Henry and the two other persons get into
16 your car?

17 A. Where did they?

18 Q. Yeah, where in the car did they go?

19 A. In the back seat.

20 THE COURT: What kind of a car do you have?

21 THE WITNESS: I have an Acura Integra. It's
22 a four door.

23 THE COURT: And you have four adult males in
24 the back seat?

25 THE WITNESS: Yeah.

D. Bonilla - Defense - Direct

1089

1 Q. And at that time did you notice whether or not
2 your brother Ulises had any blood on him?

3 A. I did notice that he was bleeding from his ear.

4 Q. Anywhere else?

5 A. No, that's about it, I think, yeah, that was about
6 it. That's all I seen.

7 Q. And did you observe -- withdrawn.

8 On your way to your house, did you pass in front
9 of your house in the street?

10 A. Yes.

11 Q. Did Misael pass that area?

12 A. Yes.

13 Q. And did Henry pass that area?

14 A. We all did.

15 Q. You all did. And that would include your brother
16 too?

17 A. Yes.

18 Q. What happened after you enter the car?

19 A. I took off. I dropped off Misael in front of his
20 house with everybody else, and my brother was the last one
21 to drop off at his girlfriend's house, Zeida.

22 Q. Let's take it one step at a time. You said you
23 dropped Misael off at his house?

24 A. Yes.

25 Q. Where is that located?

D. Bonilla - Defense - Direct

1090

1 A. Railroad. I don't know exactly the address, but
2 on Railroad.

3 Q. And at the time that you dropped Misael off at his
4 house, did you drop anybody else off the Misael's house with
5 him?

6 A. Henry got off with him and the other three guys
7 that were in the car, well, two, because Misael's the third.

8 Q. After that, am I correct in saying it was you and
9 your brother in the car?

10 A. Yes.

11 Q. Now, tell us where you went at that time.

12 A. I went to drop him off at his girlfriend's house
13 which is located in Hicksville. I don't know exactly the
14 address.

15 Q. And did you go in with him?

16 A. No, I did not.

17 Q. So you dropped him off?

18 A. Dropped him off. And then on my way back, I made
19 a stop at the deli, and then I went home.

20 Q. During time that you have lived at 163 Kinkel
21 Street, would it be fair to say that you have become
22 familiar with the property at 180 where Jennifer Villatoro
23 lives?

24 A. Yes.

25 Q. And have you stood at the curb of that property in

D. Bonilla - Defense - Direct

1091

1 front of the house at night?

2 A. Yes, I have.

3 Q. And have you done that at numerous times in the
4 past?

5 A. Yeah.

6 Q. And would it be fair to say that you have done
7 that both prior to and subsequent to September 28th, 2010?

8 A. Um-hum.

9 Q. What, if anything, did you observe about the
10 lights at the time that you stood in the curb area in front
11 of the house?

12 MS. ABDI: Objection.

13 A. Well, it goes on. I mean if a car drives past it,
14 the lights turn on.

15 THE COURT: Just one second. Overruled. Do
16 you know how the lights were activated?

17 THE WITNESS: Well, I don't know. I do know
18 if someone pass in front of the house, the light will
19 turn on, and if a car passes by, it will also turn on.

20 Q. At the time that you arrived at the scene of the
21 fighting, would it be fair to say that there were people on
22 the front lawn?

23 A. There was people on the front lawn?

24 Q. On the front lawn when you arrived at the scene
25 the first time that night.

D. Bonilla - Defense - Direct

1092

1 A. They weren't on the front lawn but on the
2 sidewalk. I don't mean front inside the house.

3 Q. And would it be fair to say were they where the
4 curb is?

5 A. Yes.

6 Q. And what you observed about the lights going on on
7 those occasions you observed that both before and after
8 September --

9 A. Yes.

10 Q. With everything that was going on that particular
11 night, did you have a specific recollection as to whether or
12 not the light was on?

13 A. Um, she does have a big -- she has a truck. His
14 wife does have a truck. So what I remember was that the
15 truck was in the driveway. So I don't remember if it would
16 have been blocking the light because it's on top of the
17 driveways.

18 Q. Only if you remember.

19 THE COURT: The lawyer asked you if you had a
20 specific recollection.

21 THE WITNESS: Okay, no.

22 THE COURT: So the answer is no?

23 THE WITNESS: No.

24 Q. Am I correct -- well, withdrawn.

25 Did you ever see anyone stab Armando?

D. Bonilla - Defense - Cross

1093

1 A. No.

2 Q. Did you ever see your brother with a knife?

3 A. No.

4 MR. MILLMAN: Thank you.

5 THE COURT: All right, let's take five
6 minutes, ladies and gentlemen, and continue with
7 cross-examination. Be back as soon as you can.

8 (Whereupon, the jury exits the courtroom.)

9 (A recess was taken.)

10 COURT OFFICER: Jury entering.

11 (The jury enters the courtroom.)

12 THE COURT: Do you want to bring back the
13 witness.

14 THE CLERK: Case on trial recalled, People of
15 the State of New York versus Ulises Bonilla, Indictment
16 202N of 2011. All parties are present, including the
17 defendant and the Spanish interpreter and the witness
18 and the jurors.

19 Both sides waive a reading of the roll and
20 consent to the seating of the jurors?

21 MR. MILLMAN: Yes.

22 MS. ABDI: Yes.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MS. ABDI:

D. Bonilla - Defense - Cross

1094

1 Q. Now, Miss Bonilla, you reside at 163 Kinkel
2 Street; is that correct?

3 A. Yes.

4 Q. And when you came into court here today, you knew
5 that your brother was charged with murder in the second
6 degree, correct?

7 A. Yes, I did.

8 Q. And when you came in here today, you knew that
9 your brother was charged with rape for an incident that
10 happened Friday afternoon, you knew that as well?

11 A. Yes.

12 Q. Zeida Bonilla, that's the defendant's girlfriend;
13 is that correct?

14 A. Yes.

15 Q. And you said she now resides at 163 Kinkel Street?

16 A. Yes.

17 Q. She did not always reside at 163 Kinkel Street; is
18 that correct?

19 A. Yes.

20 Q. In fact, she resided at 27 James Street in
21 Hicksville?

22 A. I don't know exactly the address, but I do know
23 it's in Hicksville.

24 Q. When did she move into your house?

25 A. Maybe about a year, year-and-a-half, two.

D. Bonilla - Defense - Cross

1095

1 Q. After September 28th, 2010?

2 A. Yes.

3 Q. And now she resides with you?

4 A. Yes.

5 Q. And this individual you know as Henry Hernandez,
6 he has a nickname?

7 A. Yes.

8 Q. He was your boyfriend?

9 A. No.

10 Q. You never dated him?

11 A. No.

12 Q. You were friends with him?

13 A. Yes, I was.

14 Q. You used to hang out with him?

15 A. Yes.

16 Q. On September 24th of 2010, you said you were going
17 to get a tattoo that day?

18 A. Yes.

19 Q. You were going to get a tattoo?

20 A. Yes.

21 Q. Ulises Bonilla was going to get a tattoo?

22 A. Yes.

23 Q. And your friend Xiomara --

24 A. Yes.

25 Q. -- Tursios, she was going to get a tattoo as well?

D. Bonilla - Defense - Cross

1096

1 A. Um-hum.

2 Q. Have you gotten a tattoo before?

3 A. Yes.

4 Q. How many tattoos do you have?

5 A. Nine.

6 Q. And where have you got your tattoos?

7 A. At Tattoo You.

8 THE COURT: At the place. Not on your body?

9 Q. At what place?

10 A. You want me to name all --

11 Q. I mean the location of the tattoo place, not on
12 your body.

13 A. Carle Place.

14 Q. The same tattoo shop?

15 A. Tattoo You, Carle Place.

16 Q. How long does it take to get a tattoo?

17 A. Depending on how big the tattoo is.

18 Q. What's the longest it takes to get a tattoo?

19 THE COURT: What was the longest that you
20 have ever experienced?

21 THE WITNESS: About six hours.

22 Q. And what's the shortest time you have ever gotten
23 a tattoo?

24 A. Fifteen minutes.

25 Q. And that would be a very -- 15 minutes for a

1 tattoo would be a very --

2 A. -- tiny, small tattoo.

3 Q. Tattoo You, Carle Place it's very busy on Fridays
4 and Saturdays; is that correct?

5 A. Yes.

6 Q. Did you make an appointment?

7 A. No, I didn't. I usually never make an
8 appointment. I usually just walk in.

9 Q. So on that date, according to you, you walked in
10 sometime around 5, 5:30 with the expectation that all three
11 of you were going to get tattoos that day?

12 A. Yes, because I had spoken to Evans before, but I
13 didn't give him exactly the date that I was gonna go in.

14 Q. So now you had spoken to him before?

15 A. Well, I always speak to him. He's my tattoo
16 artist. He knew I wanted get a new tattoo, but I didn't
17 tell him I was gonna go in on a certain day.

18 Q. You did not tell him you were coming at certain
19 time or certain date?

20 A. No.

21 Q. It's your testimony that you went with the
22 expectation of getting three tattoos?

23 A. Yes.

24 Q. With the knowledge that depending on what tattoos
25 people got, it could take as much as 18 hours to get a

1 tattoo?

2 A. Yes. But he is not the only one does tattoos
3 there. There's other people also that do it. He's my
4 tattoo artist.

5 Q. Who is else was working there that day?

6 A. His name is Menace.

7 Q. Do you know if for a fact he was working that day?

8 A. Yeah, he was there. And some other guy who does
9 piercings.

10 Q. He does not do tattoos though?

11 A. No.

12 Q. So there was only according to you --

13 A. Evans and Menace.

14 Q. -- two people maybe that would do tattoos?

15 A. Um-hum.

16 Q. And it was pretty busy?

17 A. Yes.

18 Q. How many people were in the shop?

19 A. About like four, four or five.

20 Q. For a tattoo place, that's considered busy?

21 A. Well, if you want to wait. I mean they close
22 until they are finished whatever tattoo they are finished
23 doing.

24 Q. So how big is the tattoo parlor?

25 A. It's kind of big. It's not so small.

D. Bonilla - Defense - Cross

1099

1 Q. Are there individual rooms to get tattoos?

2 A. No, it's like a whole open space. They just have
3 the beddings and whatever to --

4 Q. Is there a waiting area?

5 A. Yes, there is.

6 Q. Is it separate from the rest of the tattoo parlor?

7 A. Not so much. But there's something between to
8 separate. There's like a counter of things they sell, and
9 there's a little waiting spot and where they do the tattoos.

10 Q. So it's a separate room?

11 A. No.

12 Q. You are basically waiting in the store?

13 A. Yeah.

14 Q. And the four people that were there, that was in
15 addition to you three; is that correct?

16 A. Yes.

17 Q. And it's your testimony that you were there for
18 two hours?

19 A. Yes.

20 Q. And you were looking at pictures on the wall for
21 two hours?

22 A. Not exactly two hours. I mean we were hanging out
23 to see to see if they were gonna tattoo us.

24 Q. Once they told you that they couldn't tattoo you,
25 that's when you left; is that correct?

D. Bonilla - Defense - Cross

1100

1 A. Yes.

2 Q. It's your testimony that they didn't tell you that
3 they couldn't get to you until two hours later?

4 A. Well, we was just hanging around. I mean me and
5 Pippi, Xiomara, I call her Pippi, we usually always used to
6 go in and just hang out at the tattoo shop.

7 Q. So you and Xiomara would hang out at the tattoo
8 shop?

9 A. Um-hum.

10 Q. All the time?

11 A. Not all the time, but most of the time we would go
12 in. We are really close to Evans, so we would really just
13 hang around.

14 Q. But not Ulises?

15 A. No, Ulises, that was his first time going there.

16 Q. And but still it's your testimony that at 7 p.m.
17 after you had been there for two hours, that's when he
18 says -- Evan Grover says, I'm sorry, I can't get to you;
19 that's your testimony?

20 A. Yes.

21 Q. September 28th, 2010, what time did you get home?

22 A. What time did I get home?

23 THE COURT: From where?

24 Q. Let me back up. Where were you on January 28th?

25 A. I was home.

D. Bonilla - Defense - Cross

1101

1 Q. When were you home?

2 A. When was I home? What time did I get home?

3 Q. Yes, what time did you get home?

4 A. I went to work that day, so I got off work around
5 3 o'clock, and I was home.

6 Q. So what time did you get home?

7 A. 3 o'clock.

8 THE COURT: From work?

9 THE WITNESS: 3 o'clock.

10 Q. And where do you work?

11 A. I work at as a receptionist in an assisted living.

12 Q. And what time do you get to work?

13 A. 7 in the morning. I work 7 to 3.

14 Q. And when you got home, there was nobody else home?

15 A. No.

16 Q. What did you do when you got home?

17 A. I went on the computer.

18 Q. And what were you doing on the computer?

19 A. I was on the internet.

20 Q. What were you doing on internet?

21 A. I don't remember specifically what I was doing on
22 internet, but I do remember I was using the computer.

23 Q. And what time was it that you started using the
24 computer?

25 A. Well, I got home. I probably grabbed something to

D. Bonilla - Defense - Cross

1102

1 eat because that's what I usually do. Around 3:10, 3:15, I
2 was usually using the computer.

3 Q. How do you know it was 3:10, 3:15?

4 A. Because I looked at the time.

5 Q. What time did you look at?

6 A. 3:10, 3:15, around that time it was 3:10, 3:15.

7 Q. Where did you see it?

8 A. In my cable box.

9 Q. Where is your cable box?

10 A. In my living room.

11 Q. Where is your computer compared to your cable box?

12 A. Right next to each other. We have the TV and
13 computer right next to each other.

14 Q. So before you got on the computer, you made note
15 of the time?

16 A. Well, I have to pass the TV before I go onto the
17 computer.

18 Q. I thought it was right next to the computer?

19 A. Well, yeah. It's right next to it. I have to
20 pass the TV first to get to the computer.

21 Q. So it's your testimony that you got to the
22 computer, checked the time of the cable box?

23 A. Before I got to the computer, I checked the time.

24 Q. Now, how long were you on the computer?

25 A. About hour an hour, an hour and something.

D. Bonilla - Defense - Cross

1103

1 Q. And nobody else was home?

2 A. No.

3 Q. At some point you said Ulises Bonilla came home?

4 A. Yes.

5 Q. Who is your brother?

6 A. Um-hum.

7 Q. And at that time he was living at 163 Kinkel

8 Street?

9 A. Yes.

10 THE COURT: Now, the testimony was you were
11 at your computer for an hour and something?

12 THE WITNESS: Yeah, hour-and-a-half.

13 THE COURT: Is that what the something means,
14 an hour-and-a-half?

15 THE WITNESS: Yeah, because I'm not so sure.
16 I know I was there more than an hour, but I'm not so
17 sure how many minutes more it was.

18 Q. So are you sure what time he got home?

19 A. Hum?

20 Q. Are you sure what time he got home?

21 A. Am I sure what time I got home?

22 Q. What time he got home.

23 A. Yeah.

24 Q. How are you sure?

25 A. Because I looked at the time again.

D. Bonilla - Defense - Cross

1104

1 Q. So he comes home --

2 A. He usually gets out of work --

3 Q. I am not asking what he usually does. I'm asking
4 what you observed that day.

5 A. Okay, it was around --

6 Q. What time did he get home?

7 A. 4:30.

8 Q. How do you know that?

9 A. Because I looked at the cable box again.

10 Q. Ow, what door did he come home through?

11 A. The front door.

12 Q. Your testimony when he came home, you looked at
13 the cable box?

14 A. Yes.

15 Q. Where was he?

16 A. Where was he?

17 Q. Where was he coming from?

18 A. I don't know where he was coming from. I do know
19 he was coming with his girlfriend.

20 Q. But you don't know where he was?

21 A. No, I didn't question him about.

22 Q. And you said he came home, and he went to change?

23 A. Yes.

24 Q. Change his clothes. Do you know why?

25 A. He was dirty. He was coming from work.

D. Bonilla - Defense - Cross

1105

1 Q. Do you know where he was coming from?

2 A. Well, he was coming from work.

3 Q. How do you know he was coming from work?

4 A. Because he was dirty.

5 Q. Is that an assumption that he was coming from
6 work?

7 A. Yeah, because he had his working clothes on.

8 Q. But you don't know that that's where he was coming
9 from?

10 A. Well, I believe that's where he was coming from.

11 Q. Okay.

12 A. He works.

13 Q. He goes home, and he changes his clothes?

14 A. Um-hum.

15 Q. Now, then you decide you're going to get tattoos?

16 A. No. We were supposed to go to the tattoo shop.

17 Me and Xiomara were supposed to go there, and I don't know

18 if he questioned me if I was going to go out or something.

19 I told him I was gonna go. He said he wanted to go. I

20 said, Fine.

21 Q. Originally he was not part of tattoo plan?

22 A. No.

23 Q. That was the spur of the moment?

24 A. Yeah, just happened there.

25 Q. It just happened that day?

D. Bonilla - Defense - Cross

1106

1 A. Um-hum.

2 Q. He decided he wanted get a tattoo?

3 A. Not that he wanted to get a tattoo. We were
4 supposed to get a tattoo. He decided he'll come with us to
5 see if he was able to get one.

6 Q. To get a tattoo?

7 A. Yes.

8 Q. He decided he would come with you to get a tattoo?

9 A. Yes. Maybe if he was able to. We were supposed
10 to get one, me and her.

11 Q. What time did you leave your house?

12 A. I left my house around 4 something, 4:35, 4:36,
13 something like that. Not really so sure exactly what time.

14 Q. And if you are not sure exactly what time, why are
15 you giving a time? Where did you get that time from?

16 A. Well, it was around that time because I went to
17 pick up Xiomara, and I saw the time. It was like 5:10 or
18 something when I got to her house.

19 Q. And how did you see the time at 5:10?

20 A. My cell phone, because I had to call her to come
21 out the house.

22 Q. Where was your cell phone with you that day?

23 A. Where is was I? Probably charging.

24 Q. Do you recall where it was?

25 A. No, I don't.

D. Bonilla - Defense - Cross

1107

1 Q. But your cell phone has the time on it?

2 A. Yeah.

3 Q. Now, when you get to her house, what time is it?

4 A. It was like 5:10, I believe it was 5:10.

5 Q. How do you know what time it was that day?

6 A. Because I had to call her to tell her to come out,
7 that I was outside.

8 Q. And you made -- you paid careful attention to the
9 time; is that correct?

10 A. Yeah.

11 Q. Now --

12 A. Well, I have a big clock in front of my phone that
13 shows the time.

14 Q. Now, when you leave, you say you went to the
15 tattoo parlor?

16 A. Yes.

17 Q. You said you were there for approximately two
18 hours?

19 A. Yes.

20 Q. And you stayed, all three of you stayed together
21 two hours in the tattoo parlor?

22 A. Yes.

23 Q. Where did you go when you left the tattoo parlor?

24 A. We went home to my house.

25 Q. Who went home?

D. Bonilla - Defense - Cross

1108

1 A. My brother and Xiomara. We all went to my house.

2 Q. And what time did you get home?

3 A. Like around 7:20 maybe.

4 Q. How do you know it was 7:20?

5 A. I'm guessing what time because it doesn't take

6 me -- it's not that far from Carle Place to Westbury.

7 THE COURT: I don't want you to guess. Don't
8 guess.

9 THE WITNESS: Okay.

10 THE COURT: You can give your best estimate
11 if you want to, but don't guess.

12 THE WITNESS: Okay, so I'm estimating it was
13 7:20. I don't really know.

14 Q. And when you got home, what did you do when you
15 got home?

16 A. Nothing. I don't remember.

17 Q. Do you remember what you did when you got home?

18 A. No, I don't remember. I know I went home, but I
19 don't remember what I did. Probably got back on the
20 computer.

21 Q. Well, do you know if you went back on the
22 computer?

23 A. No, I don't know.

24 Q. Do you know if you left the house again?

25 A. No, I didn't go out.

D. Bonilla - Defense - Cross

1109

1 Q. So you stayed home?

2 A. Yes.

3 Q. And where did your brother go?

4 A. He went up to his room.

5 Q. Did you see where he went after that?

6 A. No, I did not.

7 Q. So you don't know if he left?

8 A. No, I don't know if he left or not.

9 Q. Or went somewhere else?

10 A. No, I don't.

11 Q. What did you do on September 25th, 2010?

12 A. September 25th?

13 Q. Yes.

14 THE COURT: That's a Saturday.

15 A. That's a Saturday. I don't know what did I do.

16 Q. You don't recall what you did that day?

17 A. No, I don't recall.

18 Q. What about September 23rd, 2010, what did you do
19 on that date?

20 A. Probably went to school and worked.

21 Q. Do you recall?

22 A. Yeah, it had to be school and work, because I was
23 going to school and working.

24 Q. But do you have an independent recollection of
25 what you did that day?

D. Bonilla - Defense - Cross

1110

1 A. No.

2 Q. Now, I'm going to take you back now to September
3 28th of 2010. On this date, you drove your brother away
4 from a homicide scene?

5 A. At the night, you mean?

6 Q. September 28th of 2010; isn't that true?

7 A. Yes.

8 Q. You got in your car, and you drove away from your
9 house?

10 A. Yes.

11 Q. And you took him to his girlfriend's house?

12 A. Yes.

13 Q. And when the police were looking for him, you told
14 them, I haven't seen him at all; that's what you told the
15 police?

16 A. Well, I don't recall the police looking for him or
17 their asking me where was my brother at.

18 Q. On September 29th of 2010 when you spoke with the
19 police, you told them, I haven't seen him?

20 A. Well, that's when they came to get me. That's
21 when they took me and they asked me for him.

22 Q. You said, I haven't seen my brother?

23 A. Well, I didn't see him. I saw him the day before
24 at night.

25 Q. You never told them that you drove him from the

D. Bonilla - Defense - Cross

1111

1 scene to his girlfriend's; isn't that true?

2 A. Yes, that's true.

3 Q. You never told them that?

4 A. Yes.

5 Q. When the police talked to you on September 29th of
6 2010, in fact, you told them you hadn't seen him at all that
7 night; that's what you told them?

8 A. I don't recall them -- telling them that.

9 Q. You never told them that you saw him anywhere near
10 180 Kinkel Street that night; isn't that true?

11 A. That's not correct.

12 Q. You never told them you saw him fighting with
13 anyone at the scene?

14 A. I did tell them that.

15 Q. You never told them that you drove him away from
16 the scene?

17 A. I didn't tell them that.

18 Q. You never told them that he was running in front
19 of you towards your car, you never told them that either?

20 A. I know.

21 Q. I didn't hear what you said.

22 A. I said I know, I agreed to that I didn't tell them
23 that.

24 Q. In fact, you didn't tell them that you saw Misael
25 Berrios fighting with anyone that night either, you never

D. Bonilla - Defense - Cross

1112

1 told them that?

2 A. Yes, I did.

3 Q. You never told them that you saw Henry Hernandez
4 fighting with anyone that date?

5 A. Yes, I did tell them.

6 Q. You never told them that. In fact, you told them,
7 I didn't see anyone who was fighting because they all had
8 masks on; didn't you tell them that?

9 A. I didn't say that the people -- didn't say that
10 Misael and Henry had a mask on. I said the other people,
11 some of the other people had masks on.

12 Q. You said you saw five people with masks that
13 night, you told them that; isn't that true?

14 A. I wasn't gonna be able to say I saw five people
15 because I wasn't gonna stand there and count them all.

16 Q. In fact, you told the only face you saw was Nancy,
17 Armando and his wife, those were the only people you could
18 recognize?

19 A. And Jocelyn also, Jocelyn too.

20 Q. You never told them that?

21 A. I did tell them that.

22 Q. In fact, you said that when they asked you did you
23 recognize any of the guys fighting, you said, No, they all
24 had masks on. I didn't see anyone's face?

25 A. I couldn't tell them they all had the masks on

D. Bonilla - Defense - Cross

1113

1 because I was recognizing Henry and Misael.

2 Q. You never told them that?

3 A. Did I tell them?

4 Q. When they asked you, that's not what you told?

5 A. I did tell them that.

6 Q. You told them you didn't recognize anybody?

7 A. How could I tell them that when I did recognize
8 Henry and Misael?

9 Q. And you never told them that you saw your brother
10 involved in any fight with Armando; isn't that correct?

11 A. I did tell them that I seen them there.

12 Q. You never told them that you saw Armando fighting
13 with the defendant?

14 THE COURT: She said involved in a fight,
15 those were her words. And you answered, I did tell
16 them I saw him there. Answer the question specifically
17 with regard to a fight.

18 THE WITNESS: Okay.

19 Q. Did you tell them that you saw your brother
20 fighting with Armando?

21 A. No, I did not tell them that.

22 Q. In fact, you told them you saw Armando fighting
23 with some other guy that you had no idea who he is?

24 A. Yes, and that he was kneeing him.

25 Q. And that Armando was kneeing this other guy?

D. Bonilla - Defense - Cross

1114

1 A. Yes.

2 Q. That you did not recognize?

3 A. Yes.

4 Q. You never told them anything about your brother
5 being involved in a fight that night?

6 A. I didn't tell them that I seen my brother being
7 involved in the fight. But I did tell them that my brother
8 was there at the moment that everything was happening.

9 Q. And that's because you're trying to protect your
10 brother; isn't that right?

11 A. I'm not trying to protect him. I'm saying what
12 really happened.

13 Q. In fact, you don't want to see him convicted of
14 anything; isn't that right?

15 A. Of course I don't. But that doesn't mean that I'm
16 going to sit here and lie.

17 Q. You already stated that there are several things
18 that you did not tell the police that night?

19 A. I agree that I did lie. But I agreed to that
20 because I was scared. I didn't know what was going on. I
21 didn't know it was someone that died. I didn't know what it
22 was. I got there in the end.

23 Q. You never told the police that you were -- that he
24 was involved in a fight with Armando, that's true, correct?

25 A. Because I didn't see him. I know he was there,

D. Bonilla - Defense - Cross

1115

1 but I did not see him.

2 Q. You did not see that, correct?

3 A. Um-hum.

4 Q. You did not say to the police, by the way, I also
5 drove him away from the scene and took him to his
6 girlfriend's house; you didn't tell them that?

7 A. No, I did not tell them that because I was scared.
8 I did not know what was going to happen. I didn't know what
9 had happened there at the moment.

10 Q. You didn't tell them because you were trying to
11 prevent him from getting into trouble; isn't that right?

12 A. I wasn't trying to prevent him from anything
13 because I didn't know what had happened. If there was
14 someone dead, I did not know.

15 THE COURT: Earlier in the cross-examination,
16 Miss Abdi asked you you drove your brother away from a
17 homicide scene, and you said, Yes.

18 THE WITNESS: Well, now I know that someone
19 passed away.

20 THE COURT: When did you first find out that
21 someone died?

22 THE WITNESS: When they came to pick me up,
23 when they came to get me and they told me that this
24 person had passed away because he had got stabbed.

25 Q. And that was the day after?

D. Bonilla - Defense - Cross

1116

1 A. Yes.

2 THE COURT: Now, did you know anyone was
3 stabbed?

4 THE WITNESS: No, before that, I did not
5 know.

6 THE COURT: Then what were you afraid of?

7 THE WITNESS: Well, I didn't know what had
8 happened. I know there was a whole big fight, and I
9 did hear a gunshot, so what was I supposed to think?

10 Q. Now, you never drove your brother to the hospital
11 on September 28th, 2010?

12 A. No, I did not.

13 Q. And you didn't pick him up from the hospital?

14 A. No. I was in school.

15 Q. And how long -- how long were you in school that
16 day?

17 A. I was there from -- I was supposed to be there
18 from 4 to 5:30 until like 10 something. They usually let us
19 out earlier. About 9:50, 9:45 we are out of school.

20 Q. You have talked to Zeida Bonilla about this case,
21 correct?

22 A. Have I ever talked about it?

23 Q. Yes.

24 A. Not on something that we was to sit down and speak
25 about it, no, not really.

D. Bonilla - Defense - Cross

1117

1 Q. You have talked to her about the tattoo parlor,
2 correct?

3 A. Yeah.

4 Q. And you talked to her about what happened on
5 September 28th of 2010?

6 A. Not -- a little bit about it. Not really, you
7 know.

8 Q. You have talked to her?

9 A. Yeah.

10 Q. How many times would you say you talked to her
11 about it?

12 A. Probably like once or twice.

13 Q. And how many times would you say you have talked
14 to her about the tattoo parlor?

15 A. That we had went to the tattoo parlor?

16 Q. Yes.

17 A. Probably once. It's not important really to talk
18 about it.

19 Q. You also talked to Xiomara Tursios?

20 A. She's my best friend.

21 Q. And how long have you known her?

22 A. Since I been a little girl.

23 Q. And you've talked to her about the tattoo parlor?

24 A. Yeah, we both used to go there.

25 Q. And how many times would you say you have talked

D. Bonilla - Defense - Cross

1118

1 to her about that day, the tattoo parlor?

2 A. Well, I don't remember really talking to her that
3 day about that day.

4 Q. Not that day. After that day, have you talked to
5 her about going to the tattoo parlor?

6 A. No.

7 Q. You never talked to her?

8 A. Actually we are not friends no more at this moment
9 so. She moved from here.

10 Q. When did that happen?

11 A. Why did it happen?

12 Q. When?

13 A. Probably a couple months ago.

14 Q. You have talked to defense counsel about this
15 case?

16 A. To who?

17 Q. Defense counsel.

18 A. To my attorney?

19 Q. Yes.

20 A. Yes.

21 Q. Well, he's not your attorney, is he?

22 A. My brother's attorney, yes.

23 Q. And how often would you say you have talked to
24 defense counsel about this case?

25 A. Well, a couple of times I will get updated and

D. Bonilla - Defense - Cross

1119

1 everything when he comes to court, how is everything going
2 with the case.

3 Q. So you get updated on the goings on of court?

4 A. Yes.

5 Q. You get updated on what happens in court?

6 A. Yes.

7 Q. He tells you what's happening in court?

8 A. Yes.

9 Q. Does he tell you what witnesses have been saying
10 in court?

11 A. Not all of them, but he told me -- he spoke to me
12 about some of them.

13 Q. So you're aware of what people have been saying in
14 this courtroom?

15 A. Some of them.

16 Q. And how often -- when was it that you first
17 learned that your brother was charged with murder?

18 A. When he got arrested.

19 Q. And when was it that you first learned that your
20 brother was charged with rape?

21 A. When my -- his attorney let me know that he was --
22 he had an additional case on him.

23 Q. And when was that?

24 A. When was it?

25 Q. When did you learn that?

D. Bonilla - Defense - Cross

1120

1 A. I don't remember.

2 Q. Was it after? What year was it?

3 A. Last year.

4 Q. Do you remember the date?

5 A. No, I do not.

6 Q. Do you recall the month you found out?

7 A. No.

8 Q. Now, when you saw your brother on September 28th
9 of 2010, you said you saw him bleeding?

10 A. Yes.

11 Q. And now I'm talking about sometime after 10:30
12 p.m.

13 A. Yes.

14 Q. Where was he bleeding?

15 A. From his ear.

16 Q. The face area?

17 A. From right here, from the back of his ear.

18 Q. Did you notice if he was bleeding from anywhere
19 else?

20 A. No, I did not notice.

21 Q. And did you notice whether or not he had a bandage
22 on?

23 A. No, I did not notice.

24 Q. When you saw him, that's at around 10:30 at night?

25 A. No, I didn't notice if he had something on his

D. Bonilla - Defense - Redirect

1121

1 finger.

2 Q. When you saw him, could you tell if he was
3 bleeding from his hands or not?

4 A. No.

5 Q. Now, when you drove away from the scene of the
6 fight, where did you take him?

7 A. I stopped first to drop off Misael, Henry and the
8 other guy at his house, and then I dropped him off at his
9 girlfriend's house.

10 Q. And did you see him again after that?

11 A. No.

12 Q. Did he ever come back home after that?

13 A. Well, he's the type of brother that was never to
14 be home. He would always sleep there one night and sleep at
15 his girlfriend's house or be outside. I barely seen him. I
16 would go to school and work, so I really didn't see him as
17 much.

18 Q. So it's fair to say that you don't keep tabs on
19 your brother?

20 A. No.

21 Q. And you don't account for his whereabouts all the
22 time?

23 A. He's a grown man. I don't need to --

24 Q. And you don't pay attention to where he is?

25 A. I really don't need to know what he does with his

D. Bonilla - Defense - Redirect

1122

1 life. That's him. He's my brother, and I'm here for him
2 but I don't need to --

3 MS. ABDI: I have no further questions.

4 THE COURT: Any redirect?

5 MR. MILLMAN: Yes, briefly.

6 REDIRECT EXAMINATION

7 BY MR. MILLMAN:

8 Q. Miss Bonilla, why is it that you did not tell the
9 police when they spoke with you about the fact that you
10 drove your brother from the scene?

11 A. Well, I was nervous. I was scared. I had been
12 there for a long time. They kept me in a room for a while.

13 Q. And Miss Abdi had asked you during
14 cross-examination -- well, withdrawn.

15 Miss Abdi had asked you about what you were doing
16 the day before September 24th and the day after. Do you
17 recall that?

18 A. I don't recall. Probably, like I said, probably
19 work --

20 THE COURT: Now, when he said do you recall
21 her asking you --

22 THE WITNESS: Oh, do I recall, yes.

23 Q. Does the date of September 24th, 2010 though have
24 a certain significance?

25 A. Yes. Because that day was his first time going

Proceedings

1123

1 with me to the tattoo shop and I introduce him to Evans. He
2 hadn't been there before. So of course I am going to
3 remember that's the day I introduce them.

4 Q. And also you did learn at some point that your
5 brother was being charged with a rape, for something that
6 allegedly took place on September 24th?

7 A. I found after when I found out that the case was
8 added onto him. I found out that they were accusing him.

9 Q. On September 24th?

10 A. Yes.

11 Q. Does that also lend significance to this date of
12 September 24th?

13 A. Yes.

14 MR. MILLMAN: That's all I have. Thank you.

15 THE COURT: Thank you. You can step down.

16 THE WITNESS: You're welcome.

17 (The witness was excused.)

18 THE COURT: Do you have another witness?

19 MR. MILLMAN: Yes, I do, your Honor, Zeida
20 Bonilla.

21 THE COURT: I'm sorry?

22 MR. MILLMAN: Zeida Bonilla, and we do need
23 an interpreter.

24 THE COURT: All right, ladies and gentlemen,
25 2 o'clock.

1 Remember the admonitions that I have given
2 you.

3 (Whereupon, the jury exits the courtroom.)

4 THE COURT: All right, are you going to
5 introduce justification as a defense?

6 MR. MILLMAN: I will just take half a minute,
7 your Honor, and I will give you an answer on that.

8 THE COURT: Because it may indicate how much
9 leeway I have to give, if any, to the prosecutor on
10 rebuttal.

11 MR. MILLMAN: Certainly, your Honor.

12 THE COURT: And obviously on the evidence in
13 this particular case, you have evidence that at least
14 from a circumstantial basis that the defendant
15 possessed a knife and perhaps a crowbar. You also have
16 evidence indicating that the deceased possessed a
17 crowbar.

18 If I give the defense of when and under what
19 circumstances you can use deadly physical force, I
20 would also have to give a charge that the defenses of
21 justification and the use of deadly physical force is
22 not available to a planned combat with deadly weapons.
23 You don't see this too often in cases like this, but
24 simply put, dueling not allowed in the State of New
25 York whether or not it's through swords, pistols or

Proceedings

1125

1 baseballs.

2 And I assume the witness you put on at 2
3 o'clock will be your last witness?

4 MR. MILLMAN: No, actually, your Honor, I
5 have two more.

6 THE COURT: Do you?

7 MR. MILLMAN: Yes, I do. And I also intend
8 to introduce the medical records.

9 The first witness is going to be Zeida
10 Bonilla, and the other one will be Evan Grover, the
11 tattoo artist.

12 Now, your Honor, I'm not 100 percent sure of
13 the order. I have to find out --

14 THE COURT: I understand. I am concerned
15 about when I have to start this jury in deliberations.
16 That is my concern. Ordinarily I wouldn't do this to
17 you, but if you people are through, I'm going to have
18 you sum up tomorrow.

19 MR. MILLMAN: Well, your Honor, I would ask
20 if we could have until Friday to do that. We have gone
21 at a very fast pace. Nevertheless, it's been over 24,
22 25 witnesses.

23 THE COURT: I understand that. And there was
24 a jury right across the hall that just spent four days
25 trying to reach a verdict, and we are going to have a

1 week's holiday. If I sum up -- if you sum up on Friday
2 on this case, they are not going to be able to
3 deliberate until Monday afternoon. I'm concerned about
4 that.

5 MS. ABDI: I mean we can sum and charge on
6 the same day, Judge.

7 MR. MILLMAN: Just there has been a number of
8 witnesses given the seriousness of the charges and the
9 pace at which we have gone, you know, I just would ask
10 for an a Friday to sum up.

11 THE COURT: When you say we could sum up and
12 charge on Friday, do you include me in that we?

13 MS. ABDI: I wouldn't charge.

14 THE COURT: If we sum up and charge on Friday
15 and we don't get a verdict next week, I'm going to
16 bring them back after the holidays. Consent?

17 MS. ABDI: Yes.

18 THE COURT: Consent?

19 MR. MILLMAN: Consent, your Honor.

20 THE COURT: And if I bring them back after
21 the holidays and I don't have a full jury, would you
22 consent to substitute an alternate? That's a very
23 important answer you are going to give me. If you are
24 not going to consent to substitute an alternate, that
25 puts me under tremendous pressure, and I'm going to

Proceedings

1127

1 have you sum up as soon as possible. Think about it.

2 (Whereupon, a luncheon recess was taken.)

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Proceedings

1128

1 A F T E R N O O N S E S S I O N

2 THE CLERK: Recalling case on trial,
3 Indictment 202N of 2011, People of the State of New
4 York versus Ulises Bonilla. All parties present,
5 including the defendant and Spanish interpreter. There
6 are no jurors present at this time.

7 THE COURT: It is a little bit premature, but
8 at this particular time, are you going to assert the
9 defense of self-defense?

10 MR. MILLMAN: No, your Honor.

11 THE COURT: No?

12 MR. MILLMAN: No.

13 THE COURT: Okay. Then I will not charge it,
14 and as a consequence, the defendant does not have to
15 impliedly admit that he possessed a dangerous
16 instrument.

17 Can you tell me at this particular time
18 whether or not you will have any rebuttal? You may not
19 be able to tell me.

20 MS. ABDI: I think there will be.

21 THE COURT: Let's get the jury, and bring in
22 the next witness.

23 Can you tell me at this particular time do
24 you want me to charge manslaughter?

25 MR. MILLMAN: I'm inclined to say yes, but I

Proceedings

1129

1 am not 100 percent sure, but my inclination is to say
2 yes.

3 THE COURT: I don't see if there's any
4 lessers with regard to any other crime charged. Do
5 you, People?

6 MS. ABDI: No.

7 THE COURT: Do you?

8 MR. MILLMAN: I will double-check, but I
9 don't think so because they indicted him on the other
10 sexual offenses also.

11 THE COURT: As far as specific charges are
12 concerned, obviously you are going to get the boiler
13 plate. People, do you want a flight charge?

14 MS. ABDI: No. I'm going to mention it in my
15 summation, but I don't need the charge.

16 MR. MILLMAN: Judge, if she is going to
17 mention it, then I would certainly want to be heard --

18 THE COURT: Do you want a flight charge?

19 MR. MILLMAN: I will want a charge on flight
20 if she's going to make mention of it in her summation.
21 But I want to know -- I know there's a standard, a
22 couple different standards.

23 THE COURT: You want an alibi charge?

24 MR. MILLMAN: Yes, your Honor.

25 THE COURT: Do you want an expanded charge on

Proceedings

1130

1 intent?

2 MR. MILLMAN: I also think there's a couple
3 of different versions of the expanded charge on intent.

4 THE COURT: If you want to give me a proposed
5 charge on intent, fine. Basically the simple charge is
6 conscious objective. If you want to expand it, you can
7 certainly expand it by any number of factors.

8 MR. MILLMAN: I'm not sure that I would
9 necessarily want, to. But I would like to at least
10 have tomorrow if I could.

11 THE COURT: Do you want a charge of
12 accessorial liability? That's the most difficult one
13 that you might have to consider. There is a potential
14 view of the evidence that this might be appropriate.
15 It might cause an awful lot of confusion. It might be
16 helpful to your client. It might be hurtful to him.

17 MR. MILLMAN: I agree it's tricky. I need to
18 give it a little bit more thought.

19 THE COURT: Fine. I am just bringing it up.

20 MS. ABDI: Judge, obviously I know if this is
21 included in the standard, but the charge on
22 circumstantial evidence.

23 THE COURT: Oh, yes.

24 COURT OFFICER: Jury entering.

25 (The jury enters the courtroom.)

Proceedings

1131

1 THE CLERK: Let the record reflect the
2 presence of all jurors. Do both sides consent to the
3 seating and waive a reading of the roll?

4 MS. ABDI: Yes.

5 MR. MILLMAN: Yes.

6 THE CLERK: Thank you.

7 THE COURT: Next witness.

8 MR. MILLMAN: Yes, your Honor. Before the
9 next witness, I have an application to move into
10 evidence the medical records of Ulises Bonilla. I ask
11 that be marked.

12 THE COURT: Now, this concerns medical
13 records to and regarding the injury to his finger?

14 MR. MILLMAN: That happened at work, yes,
15 your Honor.

16 THE COURT: Okay. Any objection, People?

17 MS. ABDI: No.

18 THE COURT: They are received without
19 objection.

20 (Defendant's Exhibit H is received and marked
21 in evidence.)

22 MR. MILLMAN: Your Honor, at this time
23 defense calls Zeida Bonilla.

24

25

Z. Bonilla - Defense - Direct

1132

1 Z E I D A B O N I L L A, a witness called on behalf of the
2 Defense, after having been first duly sworn by the
3 Clerk of the Court, was examined and testified upon her
4 oath through the interpreter as follows:

5 THE CLERK: In a loud, clear voice, please
6 state your name, spell your last.

7 THE WITNESS: Zeida Bonilla, B-O-N-I-L-L-A.

8 THE CLERK: And your county of residence?

9 THE WITNESS: Nassau.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. MILLMAN:

13 Q. Good afternoon, Miss Bonilla.

14 A. Good afternoon.

15 Q. Miss Bonilla, where do you currently live?

16 A. At 163 Kinkel Street in Westbury.

17 Q. Who do you live there with?

18 A. With my mother-in-law, my father-in-law and my
19 sister-in-law.

20 Q. And who else do you live with?

21 A. And my children.

22 Q. What are the children's names?

23 A. Ava Marino, Dora Gomez, a Lisa Gomez, Andrea
24 Bonilla.

25 Q. Andrea is the five year old daughter of Ulises

Z. Bonilla - Defense - Direct

1133

1 Bonilla?

2 A. Yes.

3 Q. And what is your relationship to Ulises Bonilla?

4 A. His girlfriend.

5 Q. How long have you been his girlfriend for?

6 A. Six years.

7 Q. And if you would, just --

8 THE COURT: How old are you?

9 THE WITNESS: Thirty-one.

10 Q. You're 31 years old. Could you identify Ulises
11 Bonilla if you see in the courtroom?

12 A. Yes.

13 Q. Can you point him out?

14 A. He's right there.

15 MR. MILLMAN: Although she didn't identify
16 clothing --

17 THE COURT: Let the record reflect she
18 identifies the defendant.

19 Q. You have the same last names with no relation; is
20 that correct?

21 A. No.

22 THE COURT: You have the same last names,
23 correct?

24 THE WITNESS: Yes.

25 THE COURT: Do you have a common parent or

Z. Bonilla - Defense - Direct

1134

1 grandparent?

2 THE WITNESS: No.

3 THE COURT: Okay.

4 Q. Miss Bonilla, I'm going to direct your attention
5 to Friday, September 24th of 2010. Where were you at 4
6 o'clock in the afternoon?

7 A. At my job.

8 Q. And where is that?

9 A. It's on 65 Kinkel Street in Westbury.

10 Q. And what is the name of the company?

11 A. Parfields Corporation.

12 Q. Who do you work there with?

13 A. I worked with Ulises.

14 Q. On that day, you were working at the same place as
15 Ulises Bonilla?

16 A. Yes.

17 Q. And what happened at 4 o'clock?

18 A. When we finished work, I went to pick up my
19 daughters at the daycare.

20 Q. Let me stop you for a moment if I could. How did
21 you get to the daycare center?

22 A. In my car.

23 Q. And who went with you in your car?

24 A. Ulises.

25 Q. Where is the daycare center located?

Z. Bonilla - Defense - Direct

1135

1 A. In Westbury.

2 Q. Did you make any stops on the way?

3 A. After I picked up my daughters, yes.

4 Q. And was Ulises in the car the entire time from the
5 time you left work to the time that you got to the daycare
6 center?

7 A. I didn't understand.

8 Q. Okay. From the time that you left work with
9 Ulises to the time that you got to the daycare center, was
10 Ulises in the car the entire time?

11 A. Yes.

12 Q. And what happened when you got to the daycare
13 center?

14 A. I picked up the girls. Then I drove by the deli,
15 and I picked some things up.

16 Q. Now, when you got to the daycare center, did
17 Ulises get out of the car at that time?

18 A. No.

19 Q. Where is the deli located that you went to?

20 A. It's on Prospect.

21 Q. That's in Westbury, correct?

22 A. In Westbury, yes.

23 THE COURT: What do you do at work? What are
24 your duties?

25 THE WITNESS: I do debrace and ensembles,

Z. Bonilla - Defense - Direct

1136

1 assembles. I don't know how you say it.

2 THE COURT: What does Ulises do?

3 THE WITNESS: He did denching to the pieces.

4 THE COURT: Is his work station by your work
5 station?

6 THE WITNESS: We work together.

7 THE COURT: Like next to each other?

8 THE WITNESS: No, different tables.

9 THE COURT: But you see him while you are
10 working?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 Q. When you got to the deli, what did you do?

14 A. I bought something for the girls.

15 Q. At the time that you did this, where was Ulises?

16 A. He was taking care of my girls.

17 Q. Where?

18 A. In the car.

19 Q. Did he stay in the car?

20 A. Yes.

21 Q. And again, I'm sorry if you told me, but I just
22 want to be sure, how old are the kids?

23 A. Andrea's five. Dora and a Lisa are eight. Ava's

24 11.

25 Q. Now, what happened when you exited the deli?

Z. Bonilla - Defense - Direct

1137

1 A. I went to drop him off at his house.

2 Q. At 163 Kinkel Street?

3 A. Yes.

4 Q. At what time did you drop him off at his house?

5 A. At 4:30.

6 Q. And what kind of a vehicle were you driving?

7 A. A Honda van.

8 Q. I want to direct your attention to -- withdrawn.

9 You indicated that you left work with Ulises at 4
10 o'clock?

11 A. Yes.

12 Q. Is that the time that you all got out of work at
13 that time?

14 A. Yes.

15 Q. I'm going to direct your attention following to
16 September 28th of 2010, Tuesday, September 28th. Were you
17 working that day?

18 A. Yes.

19 Q. And was Ulises working?

20 A. Yes.

21 Q. This is at the same place that you identified
22 before?

23 A. Yes.

24 Q. What, if anything, happened with regard to Ulises
25 during the workday?

Z. Bonilla - Defense - Direct

1138

1 A. He was doing something to a certain pieces, and he
2 got hurt.

3 Q. At the time that he got hurt, where were you?

4 A. I was giving him my back.

5 Q. I think -- I'm not sure exactly. Let me just ask
6 you this: At the time that he got hurt, were you in the
7 same room with him?

8 A. Yes.

9 Q. Were you looking towards him or away from him or
10 something else?

11 A. I wasn't looking in his direction.

12 Q. Did you hear something that brought your attention
13 to his direction?

14 MS. ABDI: Objection.

15 A. Yes.

16 THE COURT: All right, that's fine. You can
17 answer that.

18 A. Can you repeat the question?

19 Q. Yes. You indicated that you were looking away
20 from Ulises. My question is did you hear something that
21 caused you to look at in Ulises' direction?

22 A. Yes.

23 Q. What did you hear?

24 A. He said a curse word.

25 Q. What did you hear him say?

Z. Bonilla - Defense - Direct

1139

1 A. Oh, shit.

2 Q. And did you look at Ulises at that time?

3 A. Yes.

4 Q. What did you see?

5 A. I saw that his finger was bleeding.

6 Q. Did there come a time that day, September 28th,
7 2010, that you saw Ulises again afterwards?

8 A. Yes.

9 Q. What time was that, to the best that you recall?

10 A. I don't remember because I was asleep when he
11 came.

12 Q. You say you were asleep. Am I correct in stating
13 that you were at home?

14 A. Yes.

15 Q. And where was home at that time?

16 A. 27 James Street in Hicksville.

17 Q. And did there come a time that something woke you
18 up?

19 A. When someone knocked on my door. That was it.

20 Q. Tell us what happened at that time.

21 A. When he came in, he had an injury to his ear.

22 Q. Let me stop you for a moment. You said he. Who?

23 A. Ulises.

24 Q. Did you observe an injury to his ear?

25 A. Yes.

Z. Bonilla - Defense - Cross

1140

1 Q. What did you observe?

2 A. It was cut.

3 Q. Did you see blood?

4 A. Yes.

5 Q. Did you observe blood anywhere else at that time?

6 A. No.

7 Q. Was this sometime after 10:30 p.m.; would that be
8 fair to say?

9 A. I don't really remember. I was asleep.

10 Q. Fair enough. Okay. Miss Abdi's now going to ask
11 you some questions.

12 A. Okay.

13 THE COURT: Do you have any cross?

14 MS. ABDI: Yes, your Honor.

15 CROSS-EXAMINATION

16 BY MS. ABDI:

17 Q. Miss Bonilla, how do you financially support
18 yourself?

19 A. I work.

20 Q. And in September, 2010, were you also being
21 supported by Ulises Bonilla?

22 A. Yes.

23 Q. When you lived in Hicksville, 27 James Street, did
24 you live with your parents?

25 A. No.

Z. Bonilla - Defense - Cross

1141

1 Q. Who else lived in Hicksville with you?

2 A. My sisters.

3 Q. And your children as well?

4 A. And my children, yes.

5 Q. Did you rent a room from your sister, or did you
6 have all different rooms?

7 A. I rent a room.

8 Q. Do you know who owned the house?

9 A. No.

10 Q. Your sister's helped with the rent, right?

11 A. No.

12 Q. Did you pay the rent for everyone?

13 A. Yes.

14 Q. Now, at some point you moved into 163 Kinkel
15 Street; is that correct?

16 A. Yes.

17 Q. And when did you do that?

18 A. It was a year ago.

19 Q. A year ago this month? What month?

20 A. In November.

21 Q. So that would be November of 2010?

22 A. Yes.

23 Q. And you live now with Ulises Bonilla's sister and
24 his parents?

25 A. Yes.

Z. Bonilla - Defense - Cross

1142

1 Q. And do they also help you out financially?

2 A. No.

3 Q. Did they help you watch the kids?

4 A. No.

5 Q. Now, you said that your children were at daycare

6 on --

7 A. Yes.

8 Q. -- on September 24th.

9 A. Yes.

10 Q. How often do they go to daycare?

11 A. Every day.

12 Q. What times do they go to daycare?

13 A. At 7:10 until 4.

14 Q. Now, what's your work schedule?

15 A. 7:30 to 4.

16 Q. Now, how many people work in your company?

17 A. I don't know.

18 Q. Is it more than 10 people?

19 A. Yes.

20 Q. Is it more 50 people?

21 A. No.

22 Q. What kind of work do they do in the company?

23 A. We assemble pieces for airplanes.

24 Q. And do you work in one big room?

25 A. We all work together.

Z. Bonilla - Defense - Cross

1143

1 Q. In one room?

2 A. Yes.

3 Q. Are or there several rooms?

4 A. There are other rooms.

5 Q. Now, do you have a sign-in and sign-out sheet?

6 A. Yes.

7 Q. Now, directing your attention now to September
8 14th, 2010, where was the daycare?

9 A. In Westbury.

10 Q. What streets?

11 A. The garden, Garden Street.

12 Q. Do you recall what the cross streets were?

13 A. No.

14 Q. Is that Garden Street north of Prospect or south
15 of Prospect?

16 A. I don't know.

17 Q. It's fair to say that it's not very far from 163
18 Kinkel Street?

19 A. But I stop by deli.

20 Q. Well, my question is: The daycare is not far from
21 163 Kinkel Street, correct?

22 A. Um-hum.

23 Q. You could walk there?

24 A. Yes.

25 Q. The place where you work, what's the address of

Z. Bonilla - Defense - Cross

1144

1 that place?

2 A. 65 Kinkel Street in Westbury.

3 Q. Is that close to Urban Avenue?

4 A. Yes.

5 Q. And it's fair to say that that location, the work
6 location, is not far from 163 Kinkel Street?

7 A. No.

8 Q. Meaning it's close?

9 A. Yes.

10 Q. And you can walk home to 163 Kinkel Street from
11 work; is that correct?

12 A. Yes.

13 Q. Now, do you recall what time you got to the
14 daycare center?

15 A. No.

16 Q. Do you recall what time you left the daycare
17 center?

18 A. I don't.

19 Q. Do you recall what time you dropped Ulises Bonilla
20 at home?

21 A. About 4:30, I believe.

22 Q. Are you sure?

23 A. Yes.

24 Q. How do you know the time?

25 A. Because I look at my clock in the car.

Z. Bonilla - Defense - Cross

1145

1 Q. Now, how often would Ulises Bonilla come with you
2 to pick up your kids?

3 A. Every day.

4 Q. So every day, he would leave work with you?

5 A. Yes.

6 Q. Get in your car, drive to daycare and wait in the
7 car?

8 A. Yes.

9 Q. And then you would drop him off home?

10 A. Yes.

11 Q. But it's fair to say that you did not live at 163
12 Kinkel Street at that time?

13 A. No.

14 Q. In fact, at that time, you lived all the way in
15 Hicksville?

16 A. Yes.

17 Q. And it's fair to say, Miss Bonilla, that the car
18 ride, if you took a car from your work to the daycare, it
19 would take less than ten minutes?

20 A. Sometimes it's like, you know, they have the
21 sanitation trucks, and sometimes they obstruct traffic.

22 Q. Well, did a sanitation truck obstruct traffic that
23 date?

24 A. No. That's where they dump all the handwriting
25 material.

Z. Bonilla - Defense - Redirect

1146

1 Q. So if there wasn't a sanitation truck, which you
2 said there wasn't that day, it's fair to say it would only
3 take you ten minutes by car to get from work to the daycare?

4 THE COURT: Is that true?

5 A. Yes.

6 MS. ABDI: I have no further questions.

7 MR. MILLMAN: Very briefly.

8 REDIRECT EXAMINATION

9 BY MR. MILLMAN:

10 Q. You were asked about the location of the workplace
11 in relation to the daycare center by Miss Abdi. My question
12 is is Ulises right-handed?

13 THE COURT: Just one second. I think there's
14 testimony that hasn't been recorded.

15 A. I did not understand the question.

16 THE COURT: Okay. What did the witness stay?

17 A. I did not understand question.

18 Q. Is Ulises right-handed?

19 MS. ABDI: Objection. Outside the scope.

20 MR. MILLMAN: I would to ask for some leeway.

21 THE COURT: Is he right-handed or left-handed
22 or ambidextrous?

23 THE WITNESS: With the right.

24 MR. MILLMAN: Thank you.

25 THE COURT: Step down. Thank you.

E. Grover - Defense - Direct

1147

1 (The witness was excused.)

2 THE COURT: Do you have another witness?

3 MR. MILLMAN: Yes, your Honor. At this time
4 the defense calls Evan Grover.

5 E V A N G R O V E R , a witness called on behalf of the
6 Defense, after having been first duly sworn by the
7 Clerk of the Court, was examined and testified upon his
8 oath as follows:

9 THE CLERK: In a loud, clear voice, please
10 state your name and spell your last.

11 THE WITNESS: Evan Grover, G-R-O-V-E-R.

12 THE CLERK: And your county of residence?

13 THE WITNESS: Suffolk.

14 THE CLERK: Thank you.

15 THE COURT: Do me a favor and remove your
16 gum.

17 DIRECT EXAMINATION

18 BY MR. MILLMAN:

19 Q. Good afternoon, Mr. Grover. Mr. Grover, are you
20 here pursuant to subpoena?

21 A. Excuse me?

22 Q. Are you here pursuant to subpoena?

23 A. Yes.

24 Q. Where do you currently live?

25 A. I live in Deer Park.

E. Grover - Defense - Direct

1148

1 Q. And for how long have you lived in Deer Park?

2 A. I've lived there about eight years.

3 Q. And where do you work?

4 A. I work at Tattoo You in Carle Place.

5 Q. What is the address there?

6 A. 524 Westbury Ave.

7 Q. How long have you worked there for?

8 A. I've worked there for about three years.

9 Q. And what is your position at Tattoo You?

10 A. A tattoo artist.

11 Q. And is that your position or was that your
12 position on September 24th, 2010?

13 A. Yes.

14 Q. Do you know somebody named Diana Bonilla?

15 A. Yes.

16 Q. How do you know her?

17 A. She's a client.

18 Q. I want to direct your attention to a Friday,
19 September 24th of 2010. Were you working on that day?

20 A. I believe so.

21 Q. Did there come a time that day that you saw Diana
22 Bonilla?

23 A. She's been to the shop many times.

24 Q. On that particular day, September 24th of 2010,
25 Friday, September 24th, did there come a time that you saw

E. Grover - Defense - Direct

1149

1 her on that day?

2 THE COURT: Do you have a recollection of
3 seeing her on that specific date?

4 THE WITNESS: I can't specifically recall
5 every date that I saw her. She's been to the shop many
6 times.

7 Q. And Mr. Grover, did you -- I'm just going to ask
8 you to take a look at --

9 MR. MILLMAN: I ask to have this marked I
10 believe it's Defendant's I for identification.

11 (Defendant's Exhibit I is marked for
12 identification.)

13 Q. I ask you to take a look at what's been marked as
14 Defendant's I for identification. I'm going to ask you does
15 that refresh your recollection as to whether or not you saw
16 Miss Bonilla on Friday, September 24th?

17 A. Yes.

18 Q. And did you see her on that date?

19 A. Yes, I did.

20 Q. What time was it that you saw her?

21 A. It was the afternoon, late afternoon.

22 Q. And who was she with when you saw her?

23 A. She was with a girlfriend of hers and her older
24 brother.

25 Q. Do you know her older brother's name?

E. Grover - Defense - Direct

1150

1 A. Ulises.

2 Q. Had you met Ulises before that day?

3 A. No.

4 Q. Have you seen him since that day?

5 A. No, not until today.

6 Q. And you said not until today. Do you see him here
7 in the courtroom with us?

8 A. Yes.

9 Q. Can you just identify and point out an article of
10 clothing that he's wearing?

11 A. The gentleman in the table in the middle with the
12 blue shirt.

13 THE COURT: Yes.

14 Q. When you saw Diana Bonilla, Ulises and her friend,
15 what, if any, conversation happened at that time?

16 A. He was interested in getting some tattoo work
17 done. I was busy. We -- he showed me some work he already
18 had done on his arm, and he wanted me to finish the rest of
19 his arm.

20 Q. Do you recall any other conversation that you had
21 with either Ulises, Diana or the friend?

22 A. We spoke about -- we just threw some ideas back
23 and forth. I was busy again, so I didn't really have time
24 to actually have a real consultation with him and really
25 figure out anything to do on him. So we spoke about him

E. Grover - Defense - Direct

1151

1 coming back and hopefully getting the work done.

2 Q. And let me just ask you at the time that you spoke
3 about possibly coming back, was that just prior to them
4 leaving?

5 A. No, I think they stayed a little while looking at
6 some pictures. We have tattoo frames, told him to look the
7 some, maybe could get some ideas.

8 Q. And did there come a time when they left Tattoo
9 You?

10 A. Did there come a time when they left?

11 Q. Yes.

12 A. Yes.

13 Q. And about what time was that?

14 A. I don't know. They were there for maybe longer
15 than an hour. I'm not sure what time they came in. I'm not
16 sure what time they left.

17 Q. And correct me if I am wrong, you indicated it was
18 late afternoon that they arrived?

19 A. Yes.

20 Q. And during the time that they were there, while
21 your weren't speaking to them constantly, did you see Ulises
22 from time to time during the time they were there?

23 A. Yes.

24 Q. And do you recall any conversation that you had
25 with them, and by them I mean Ulises, Diana or her friend

E. Grover - Defense - Direct

1152

1 before they left?

2 THE COURT: Other than tattooing.

3 A. No.

4 Q. Now, in terms of the time that they left, I'm just
5 going to ask you again to take look at -- well, you
6 indicated you don't recall what time that they left?

7 THE COURT: He said he didn't know when they
8 came or when they left.

9 Q. When you say you didn't know, do you mean that you
10 don't recall because of lot of time has passed?

11 A. Yes.

12 Q. I am just going to ask you looking at Defendant's
13 I for identification in front of you, and I'm just going to
14 ask if that refreshes your recollection as to when they
15 left.

16 THE COURT: What he means is does it bring
17 back a memory, that's what he means.

18 A. Yes.

19 Q. What time it was that they left?

20 A. Seven.

21 Q. And I'm also going to ask if I Defendant's I for
22 identification refreshes your recollection as to when it was
23 they arrived.

24 A. Yes.

25 Q. What time?

E. Grover - Defense - Cross

1153

1 A. Five.

2 MR. MILLMAN: Nothing further, thank you.

3 THE COURT: Any questions?

4 MS. ABDI: Yes.

5 CROSS-EXAMINATION

6 BY MS. ABDI:

7 Q. Now, Mr. Grover --

8 A. Yes.

9 Q. -- do you recall when you gave the statement that
10 you have been provided with?

11 A. Yes.

12 Q. When was that?

13 A. It was several months ago this year. It was
14 during 2011. It was months ago.

15 Q. Would looking at the statement help to have you
16 tell us when you gave that statement?

17 A. Yes.

18 Q. Please look at that.

19 A. March 7th, 2011.

20 Q. So you gave that statement in March of 2011?

21 A. Yes.

22 Q. Now, do you know who you gave that statement to?

23 A. I don't remember his name. It was a gentleman
24 that came in. He was an investigator for the case, I
25 believe. I don't remember his name.

E. Grover - Defense - Cross

1154

1 Q. He was an investigator --

2 A. Matthew Sphere. He notarized it.

3 Q. He was an investigator from the defense; is that
4 correct?

5 A. Yes.

6 Q. Do you know what the charges are in this case?

7 A. Yes.

8 Q. You know there's a charge of murder?

9 A. Yes.

10 Q. And you know there's a charge of rape?

11 A. Yes.

12 Q. Now, it's fair so say, Mr. Grover, that you don't
13 specifically recall the date of September 24, 2010?

14 THE COURT: Is that true?

15 THE WITNESS: Yes.

16 Q. So as you here today, you don't know what date you
17 saw Ulises Bonilla in Tattoo You?

18 A. I'm getting confused.

19 THE COURT: She's asking you about specific
20 dates and do you have a specific memory that September
21 24th was the first time you saw the defendant. That's
22 what she is asking you with respect to the paper.

23 A. No.

24 Q. So you don't know?

25 A. No.

E. Grover - Defense - Cross

1155

1 Q. They came in on September 24th of 2010?

2 A. No.

3 Q. And it's fair to say you also don't recall what
4 time they came in, if they came in?

5 A. Yes, it is fair to say that.

6 Q. And how many days a week do you work?

7 A. I work five days a week.

8 Q. And how many hours do you work?

9 A. I work --

10 THE COURT: Does it vary?

11 THE WITNESS: Yeah, it does vary. Sixty
12 hours about.

13 Q. Is it fair to say you work a lot of hours in the
14 tattoo shop?

15 A. Yes, I do.

16 Q. And it's fair to say that when you're working,
17 you're not continuously paying attention to a clock?

18 A. True, yes.

19 Q. And when you're working, unless you have an
20 appointment, you don't make specific mention of the date?

21 A. Correct.

22 MS. ABDI: I have no further questions.

23 THE COURT: Do you have anything?

24 MR. MILLMAN: I have, your Honor.

25

E. Grover - Defense - Redirect

1156

1 REDIRECT EXAMINATION

2 BY MR. MILLMAN:

3 Q. So as you sit here, Mr. Grover, given the amount
4 of time that's passed, you don't recall a specific date?

5 A. Yes.

6 Q. Can we agree that at the time you gave the
7 statement to my investigator, it was certainly much closer
8 in time --

9 A. Yes.

10 Q. -- than it is today, correct?

11 A. Yes.

12 Q. Your memory would have been much better?

13 A. Yes.

14 Q. And you signed that statement, right?

15 A. Yes.

16 Q. Under penalty of perjury, right?

17 A. Yes.

18 Q. And you indicated in the statement that they were
19 there September 24th between 5 and 7, right?

20 MS. ABDI: Objection.

21 A. Yes.

22 THE COURT: Overruled.

23 Q. And when you say you don't recall -- withdrawn,
24 withdrawn.

25 Other than the time you told us about that you

E. Grover - Defense - Redirect

1157

1 testified about when you spoke with Ulises, have you ever
2 spoken to him or met him other than that night?

3 MS. ABDI: Objection.

4 A. No.

5 THE COURT: Overruled.

6 MR. MILLMAN: Nothing further. Thank you.

7 THE COURT: You can step down.

8 THE WITNESS: Thank you.

9 (The witness was excused.)

10 THE COURT: Any other witnesses?

11 MS. ABDI: No, your Honor.

12 THE COURT: Defense rests his case?

13 MR. MILLMAN: Defense does rest, your Honor.

14 THE COURT: Do the People rest?

15 MS. ABDI: Judge, may I just approach?

16 THE COURT: You don't have to approach. Do
17 you wish to offer any testimony in rebuttal?

18 MS. ABDI: Yes.

19 THE COURT: Okay. Now, ladies and gentlemen,
20 the People have rested their direct case. The defense
21 has rested its direct case.

22 Now, the People wish to introduce evidence in
23 rebuttal. The purpose of rebuttal testimony is not to
24 rehash the direct case. It's to rebut that which was
25 brought up on the defendant's case, and for that

E. Grover - Defense - Redirect

1158

1 purpose alone.

2 Let me give you an example of this which you
3 can accept or reject. Suppose witness A is accused of
4 a crime that takes place January 1st in Garden City at
5 noontime. Witness B says that the defendant was with
6 me at that specific time, and we were in Gurney's Inn
7 in Montauk Point. Rebuttal to that, and I don't know
8 anything about Garden City. Rebuttal to that would be
9 witness C who says I don't know anything about Garden
10 City. I don't know anything about Gurney's Inn. But I
11 do know that witness B who places the individual at
12 Gurney's Inn, that witness was with me in Mount Airy
13 Lodge in the Poconos. That's true rebuttal, and it's
14 ordinarily of a very limited nature.

15 The People will present what they have
16 tomorrow. We will see you tomorrow at 9:30.

17 Remember the admonitions I have given you.

18 There is a possibility, I haven't decided
19 yet, but there is a possibility you will be breaking
20 early tomorrow. There's also a possibility that I may
21 require the parties to sum up tomorrow afternoon, and I
22 will charge you on Friday. I'm getting a lot of flak
23 from the attorneys on that issue, and maybe rightfully
24 so. But the last thing I want you to do is -- well, I
25 really would like -- I don't want you to go into the

J.H.

E. Grover - Defense - Redirect

1159

1 Christmas holidays on in particular case if it can be
2 helped.

3 (Whereupon, the jury exits the courtroom.)

4 THE COURT: What is the nature of your
5 rebuttal testimony?

6 MS. ABDI: Judge, this is why I wanted to
7 kind of approach before, you know, I say I may have
8 something in front of jury because I'm not sure if your
9 Honor will allow me to do this. But I was going to
10 call -- Diana Bonilla had testified that she had told
11 the police certain bits of information regarding
12 specifically who she saw in the fight. And I was going
13 to call Detective Cereghino to get into just that
14 limited area of whether or not these, indeed, were
15 other people that she saw at the scene.

16 THE INTERPRETER: I can't hear you.

17 MS. ABDI: To get into whether or not, the
18 limited issue whether or not she had indicated to him
19 about those people that she had seen.

20 THE COURT: All right, she said that she did
21 tell an untruth in certain areas. She did say that.
22 Now, if that's the case, then you will not be able to
23 introduce any further evidence of that specific untruth
24 because she admits it.

25 If, however, she denies saying to Cereghino

E. Grover - Defense - Redirect

1160

1 certain statements and they are material, then you
2 could put Cereghino on the stand and say that she said
3 certain things to him.

4 MS. ABDI: And that's yes, your Honor, I
5 believe there's just that one aspect. Because there
6 were other things that she admitted that she did not
7 tell them that she lied will about. Obviously I
8 wouldn't be getting into those issues because she
9 answered. It's just the two specific questions that
10 she said she told the police she saw Misael and she saw
11 Henry Hernandez getting involved in the fight.

12 THE COURT: I'll let you do that.

13 MS. ABDI: Judge, will you be expecting us to
14 sum up tomorrow or Friday?

15 THE COURT: Well, if I were in your position,
16 and after a two-week case, some judge didn't let me
17 prepare my summation, I would be pretty damn mad. You
18 can sum up on Friday.

19 MS. ABDI: Thank you, Judge.

20 MR. MILLMAN: Thank you, Judge.

21 THE COURT: Okay, we'll see you tomorrow.

22 (Whereupon, the trial is adjourned to
23 December 15th, 2011.)
24
25

1 STATE OF NEW YORK : NASSAU COUNTY

2 SUPREME COURT : PART 39

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

Ind. No. 202N-11

6 ULISES BONILLA,

7 Defendant.

8 -----X

9 JURY TRIAL

10 December 15, 2011
11 262 Old Country Road
12 Mineola, New York

12 B E F O R E :

13 HON. GEORGE R. PECK,
14 Acting Supreme Court Justice

16 A P P E A R A N C E S :

17 HON. KATHLEEN M. RICE
18 Nassau County District Attorney
19 BY: ZEENA ABDI, ESQ., of Counsel
20 Assistant District Attorney
21 For the People

21 DANIEL L. MILLMAN, ESQ.
22 316A Main Street
23 Roslyn, New York 11576
24 For the Defendant

24 JOANNE HORROCKS, CSR
25 Senior Court Reporter

1 COURT OFFICER: Jury entering.

2 (The jury enters the courtroom.)

3 THE CLERK: Case on trial, People of the
4 State of New York versus Ulises Bonilla, Indictment
5 202N of 2011. All parties are present, including the
6 defendant and Spanish interpreter and all jurors.

7 Do both sides waive a reading of the roll,
8 consent to the seating?

9 MS. ABDI: Yes.

10 MR. MILLMAN: Yes.

11 THE COURT: All right, ladies and gentlemen,
12 we're fastly coming to a point where the evidence is
13 concluded in this particular case. It hasn't been an
14 overly long case. You may think so. But there is a
15 lot of material in here.

16 I told you yesterday we would proceed with
17 summations today. After you left yesterday, I had
18 discussions with the attorneys on issues of law, and I
19 acceded to their plea that they have a little time to
20 prepare for their summations. So we're going to do the
21 summations tomorrow.

22 You will have some more testimony in rebuttal
23 case, in the rebuttal case today which won't be too
24 long. The good news is you are going to get out soon,
25 and since you are here and heard testimony, you are

1 going to get paid. But the bad news -- actually the
2 bad news is we will be delayed somewhat but not that
3 much.

4 Now, tomorrow, you will hear the summations,
5 and I expect to give you the case for deliberation
6 tomorrow afternoon. You will probably not have too
7 much time to deliberate tomorrow afternoon. And if the
8 case goes into Monday, this is what I want to tell you.
9 I have been telling you to get here at 9:30 because we
10 can't proceed until everybody is here. And you know
11 that many times we don't start until 10:30. There are
12 reasons for this. However, when you are deliberating,
13 once all 12 of you are here, you can start
14 deliberating, you don't have to come back to the
15 courtroom. So as of Monday, I really want you here 9
16 o'clock so you can immediately start deliberating.
17 Also -- and you can do that when all 12 of you are
18 here.

19 Also, I want to know tomorrow from any juror
20 if any problems have developed, such as a grandmother
21 in extremis or something like that that you might have
22 a problem with being on this case all of next week or a
23 good portion of next week. Just let me know tomorrow.

24 And lastly, I haven't made a decision on this
25 yet, but I may seek approval from the Administrative

Proceedings

1164

1 Judge to work a little later, like 5:30 until 6
2 o'clock. So just be prepared with the proper notice
3 upon my part to you that on some days next week, we may
4 be working later. It may not be necessary.

5 We're now on the People's rebuttal case.

6 MS. ABDI: People call Detective James
7 Cereghino.

8 THE COURT: As I said to you, I believe it
9 was yesterday, the purpose of a rebuttal case is not to
10 rehash the People's direct case. It's simply to deal
11 with a matter that was first brought up in the
12 defendant's case.

13 MS. ABDI: Thank you.

14 THE CLERK: Detective, please just state your
15 name for the record.

16 THE WITNESS: First name is James, last name
17 Cereghino, C-E-R-E-G-H-I-N-O.

18 THE CLERK: Please be reminded you're still
19 under oath.

20 THE WITNESS: Yes, sir.

21

22

23

24

25

Det. J. Cereghino - People - Direct 1165

1 D E T . J A M E S C E R E G H I N O, a witness called on
2 behalf of the People, after having been previously duly
3 sworn by the Clerk of the Court, was examined and
4 testified upon his oath as follows:

5 DIRECT EXAMINATION

6 BY MS. ABDI:

7 Q. Good morning, Detective.

8 A. Good morning, counsel.

9 Q. I'm going to direct your attention to September
10 29th of 2010. As part of your investigation, did you have a
11 conversation with a Diana Bonilla?

12 A. Yes, I did.

13 Q. And as part of your conversation, did you ask her
14 about the events of September 28th, 2010 in front of 180
15 Kinkel Street?

16 A. Yes, I did.

17 Q. Did she ever tell you that Misael Berrios was
18 involved in a fight in front of 180 Kinkel Street?

19 A. No, no, she didn't.

20 Q. Did she ever tell you that Henry Hernandez was
21 involved in the fight in front of 180 Kinkel Street?

22 A. No, she didn't.

23 Q. And did she ever tell you that her brother was
24 there at the time of the fight at 180 Kinkel Street?

25 A. I specifically asked her if her brother was there,

Det. J. Cereghino - People - Direct

1166

1 and she said no, she had not seen him since the previous day
2 when he had injured his finger at work and he was going to
3 the hospital to have it tended to.

4 MS. ABDI: I have nothing further.

5 THE COURT: Any cross?

6 MR. MILLMAN: No questions.

7 THE COURT: Okay. Step down.

8 THE WITNESS: Yes, sir.

9 (The witness was excused.)

10 THE COURT: People rest their rebuttal case?

11 MS. ABDI: Yes, your Honor.

12 THE COURT: Defendant rests?

13 MR. MILLMAN: Yes, your Honor.

14 THE COURT: Ladies and gentlemen, remember
15 the admonitions I have given you. We'll see you
16 tomorrow at 9:30, and I guarantee you you are going to
17 be working a whole lot harder tomorrow than you did
18 today. Have a pleasant day and evening.

19 (Whereupon, the jury exits the courtroom.)

20 THE COURT: Both sides having rested, are
21 there any motions at this time?

22 MR. MILLMAN: Just one minute. Yes, your
23 Honor. At this time defense moves for trial order of
24 dismissal with regard to both the murder and related
25 charges and the rape and related charges.

1 Particularly with regard to the murder
2 charges on the defendant's case, evidence was brought
3 out to explain the presence of defendant's blood on the
4 rear seat of the vehicle seen leaving the scene
5 basically in total of the evidence. It's our position
6 they did not make out a case.

7 With regard to the rape and sexual related
8 charges, including the endangering, all charges related
9 to that incident, I think particularly the evidence
10 presented during the defendant's case establishes an
11 alibi. I understand to some extent it's a question of
12 fact there. But our understanding is based on totality
13 of the evidence there is insufficient evidence, and I
14 ask for a trial order of dismissal.

15 THE COURT: People, just refresh me on the
16 evidence that you presented with regard to the crowbar
17 as a possession of a dangerous instrument with intent
18 to use the same unlawfully.

19 MS. ABDI: Your Honor, that was -- there was
20 testimony by Nancy Villatoro that she had seen the
21 defendant with what's charged as a blunt instrument,
22 what appeared to her to be a tire iron, take it and
23 strike her father, Armando Villatoro.

24 THE COURT: Okay, I remember that now.
25 Counsel, all of the issues that you raised are factual

1 issues that must be decided by a jury. Your motions
2 are denied.

3 Now, what I must do now is inform you of any
4 lesser included charges that I might submit to the jury
5 and is there any argument on that. I think
6 manslaughter in the first degree is an appropriate
7 lesser included charge of murder. Do you request that,
8 counsel?

9 MR. MILLMAN: Yes, I certainly do. I do
10 think it's appropriate, and we are asking for that.

11 THE COURT: People, you oppose?

12 MS. ABDI: Yes, your Honor.

13 THE COURT: I am going to grant it. I will
14 charge manslaughter in the first degree under the
15 theory of the tend to cause serious physical injury and
16 death is caused. I don't see with regard to the
17 remainder of the counts in the indictment any
18 appropriate lesser included. Does anyone disagree with
19 me?

20 MR. MILLMAN: Your Honor, I don't disagree.
21 The only lesser included I'm asking for is
22 manslaughter.

23 MS. ABDI: I don't disagree, meaning I agree.

24 THE COURT: All right, we will do that. We
25 did talk about some of the things I would charge.

1 Nothing is brought up which is novel except the defense
2 counsel in an off-the-record discussion asked me to
3 include in assessing the credibility of a witness
4 whether or not a timely outcry was made, and I will do
5 that. I'll charge everything that was requested off
6 the record. That includes flight charge, motive
7 charge, circumstantial evidence charge. And you want
8 me to charge the -- on the defendant's failure to
9 testify?

10 MR. MILLMAN: Yes, your Honor. I have
11 submitted to you a charge which I copied to counsel
12 also. With the exception of the extreme emotional
13 disturbance and the manslaughter in the first degree
14 section pertaining to extreme emotional disturbance, I
15 am asking for everything else in there, most of which
16 are standard, but the language is in there.

17 With regard to the prompt outcry, the issue
18 of the credibility and the effect that any delay in
19 reporting might have did include the specific language
20 in there as well. It was taken from the CJI, so I
21 believe it is standard language. And as far as the
22 charge of flight, your Honor, I would just want to, I
23 don't know if the Court has handy exactly what it
24 intends to charge. I think I have the standard charge,
25 but I think there is more than one standard charge to

Proceedings

1170

1 that, so I just want to inquire whether or not the
2 Court had the language that it intended to charge on
3 the flight issue.

4 THE COURT: I don't have it with me, but it's
5 pretty much standard.

6 MR. MILLMAN: Okay, all right. I thought I
7 saw two different -- I'll double-check that, Judge.

8 THE COURT: Do you want me to include your
9 requests to charge as a court exhibit?

10 MR. MILLMAN: Yes, as a court exhibit.
11 Obviously it won't go going to the jury. Yes, as a
12 court exhibit, that's fine.

13 THE COURT: Because that preserves what you
14 have to say.

15 Now, obviously you are withdrawing your
16 request as to emotional disturbance and manslaughter.
17 You did make reference to the People's failure to call
18 a witness. I'm not giving you a missing witness charge
19 because it was not brought up in the People's case. In
20 other words, it's untimely. That doesn't mean you
21 can't comment on it in summation. Feel free to do
22 whatever you wish on that.

23 Okay, do you want to mark this as a court's
24 exhibit. Other than that, we'll see you tomorrow.

25 MR. MILLMAN: Thank you, your Honor.

Proceedings

1171

1 (Whereupon, the trial is adjourned to
2 December 16th, 2011.)
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1 STATE OF NEW YORK : NASSAU COUNTY

2 SUPREME COURT : PART 39

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

Ind. No. 202N-11

6 ULISES BONILLA,

7 Defendant.

8 -----X

9 JURY TRIAL

10 December 16, 2011
11 262 Old Country Road
12 Mineola, New York

12 B E F O R E :

13 HON. GEORGE R. PECK,
14 Acting Supreme Court Justice

15
16 A P P E A R A N C E S :

17 HON. KATHLEEN M. RICE
18 Nassau County District Attorney
19 BY: ZEENA ABDI, ESQ., of Counsel
20 Assistant District Attorney
21 For the People

22 DANIEL L. MILLMAN, ESQ.
23 316A Main Street
24 Roslyn, New York 11576
25 For the Defendant

JOANNE HORROCKS, CSR
Senior Court Reporter

Proceedings

1173

1 THE CLERK: Case on trial, People of the
2 State of New York versus Ulises Bonilla, Indictment
3 202N of 2011. All parties present including the
4 defendant and the Spanish interpreter. There are no
5 jurors present at this time. Any applications?

6 THE COURT: All right, the jurors are in
7 route. Does anyone want to place anything on the
8 record before summations begin?

9 MR. MILLMAN: No, your Honor.

10 MS. ABDI: No, your Honor.

11 THE COURT: I thought you wanted to do
12 something with the 911 tape?

13 MS. ABDI: Yes, your Honor. I believe
14 defense counsel's Exhibit D is in evidence. One
15 particular 911 call is the only thing that's in
16 evidence. The tape contains other 911 calls and police
17 radio transmissions. So what I have done is I have
18 taken out that one call and placed it on a separate
19 disk which I believe defense counsel can have it marked
20 D-1, and that should be the disk that should the jury
21 require evidence that that will be the disk that will
22 be forwarded with the jury.

23 THE COURT: Why don't we just substitute the
24 exhibits?

25 MS. ABDI: Judge, as far -- I believe just

Proceedings

1174

1 for the clarity of the record that we should have those
2 two exhibits and then that one exhibit can be
3 substituted as far as giving the jury that exhibit.
4 But as far as the record --

5 THE COURT: All right, by consent, we will
6 introduce a redacted tape as D-1.

7 MR. MILLMAN: And I'll just ask to have this
8 marked. And this is in the highly, highly unlikely
9 event that we listen to what didn't come out.

10 (Defendant's Exhibit D-1 is received and
11 marked in evidence.)

12 COURT OFFICER: Jury entering.

13 (The jury enters the courtroom.)

14 THE CLERK: Let the record reflect the
15 presence of all jurors. Do both sides waive a reading
16 of the roll and consent to the seating?

17 MS. ABDI: Yes.

18 MR. MILLMAN: Yes.

19 THE CLERK: Thank you.

20 THE COURT: All right, ladies and gentlemen,
21 we are about to commence summations. Under our system
22 of law, the defense goes first, the People go second.

23 Remember what I said to you previously,
24 summations are not evidence. If you desire, you are
25 free to adopt all or part of anyone's arguments as your

1 own. You are not required to. But they are not
2 evidence. Proceed.

3 MR. MILLMAN: Good morning, your Honor,
4 counsel, ladies and gentlemen of the jury. Before I
5 begin, I want to, again, thank you for the attention
6 and patience that you have had throughout this trial.

7 As we discussed during jury selection, you
8 have a very important job. You have now heard the
9 evidence and will be called upon to make decisions
10 about which evidence you believe and to what extent and
11 which evidence you choose to not believe. And I will
12 now review that evidence with you, and it's a purpose
13 of closing statement. And I will tell you that I
14 firmly believe that the evidence has failed to prove my
15 client's guilt with respect to any of the charges
16 before you.

17 I submit to you that regardless of how you
18 look at the evidence, it all adds up to the same thing,
19 reasonable doubt. If you look at the People's
20 evidence, it's clear they have not met their burden.

21 First, I want to address the allegations of
22 rape and the other charges related to Jennifer
23 Villatoro. The evidence presented by the District
24 Attorney in an effort to prove my client's guilt
25 consists of unreliable witness testimony and not a

1 shred of physical evidence connecting my client to the
2 allegations made by Jennifer Villatoro.

3 Now, you heard testimony from Dr. Yasmine
4 Pompey, and she did tell you that based upon her
5 examination and based upon the existence of what she --
6 you know, what she termed as a B cleft in her
7 examination that she conceded that it was consistent
8 with either digital penetration, fingers, or penile
9 penetration. She did indicate in her report that it
10 was consistent with digital penetration. You do have
11 those records in evidence to review.

12 However, Dr. Pompey significantly was unable
13 to identify when this would have happened, any such
14 penetration, and the person that is the source of the
15 penetration. And there is no physical evidence linking
16 my client to any such penetration even if you conclude
17 that it did happen.

18 The examination Dr. Pompey told you revealed
19 no evidence of external trauma and no tears in the
20 vaginal area. And Dr. Pompey did tell you that
21 Jennifer, once again, did not report any penetration by
22 a penis.

23 Now, the judge will tell you about what
24 factors that you can consider in evaluating the
25 testimony of a witness. There are two such factors

1 that I submit to you that are particularly important
2 here when you consider the testimony of the witnesses,
3 the children witnesses with regard to the rape
4 allegations. One such factor is whether or not the
5 testimony is plausible and likely to be true.

6 You bring your common sense and experience
7 with you. Use that to make judgments. Use your common
8 sense.

9 The second factor that I want you to keep in
10 mind in evaluating the credibility of these witnesses
11 is whether it is consistent with other evidence in the
12 case, because I submit to you that the testimony, first
13 of all, the two children that are close friends with
14 Jennifer, and I am talking about Steven Destina and
15 Ivan Alcantara, is unreliable and unworthy of belief.
16 The testimony of Steven Destina and Ivan Alcantara is
17 implausible on its face. They would have you believe
18 that my client approached Jennifer Villatoro in broad
19 daylight at a public park that was crowded and that
20 routinely has at least four uniform patrol officers
21 walking the area and that right out in the open, he was
22 kissing and touching a 10 year old girl. I submit to
23 you that's implausible on its face. And Steven
24 Destina's testimony is entirely inconsistent with other
25 more objective and more reliable evidence in that case,

Proceedings

1178

1 and that's significant. Steven Destina told you that
2 he observed Jennifer and she had swollen and bruised
3 lips right after the incident. He told you that two
4 weeks later, that bruising was still there, although it
5 was less pronounced.

6 Well, we heard from Police Officer Bendetto.
7 He testified that he responded to the home on the date
8 that Jennifer claims that this took place. And he told
9 you that he spoke to her, and he spoke with Steven, and
10 he spoke with Ivan. And do you remember what he told
11 you? He didn't see any indication of any bruising or
12 swelling on the lips.

13 Again, he spoke to the children, all three of
14 them, spoke to the mother. He knew what it was about.
15 He knew what he was responding to, a trained police
16 officer with many years of experience, and he doesn't
17 see this swelling and bruising despite the fact that
18 Jennifer Villatoro told you that she was actually
19 putting ice it on right in front of the police officer
20 when she was talking to him. She told you that.

21 The testimony of Steven Destina in this
22 regard with regard to the swelling and bruising on the
23 lips is also inconsistent with the medical records of
24 Jennifer Villatoro. They don't indicate this bruising
25 and swelling, and that was a week later. But Steven

1 Destina told you that two weeks later, it was still
2 there. It was just less pronounced.

3 Additionally, there's a wide discrepancy in
4 time offered by the children witnesses that only
5 further accents why their testimony is not reliable.
6 Steven, he indicated that he, Ivan and Jennifer arrived
7 at the park either 3 or 4, and he was clearly uncertain
8 about that. The only one that was certain about the
9 timing was as Oscar. He told you that he returned home
10 from soccer practice at about 5:30 p.m. This is on
11 September 24th of 2010. He knew it was 5:30 or a
12 little after because that is when he gets home from
13 soccer practice every day or whenever he has soccer
14 practice. He told you that that time, a little after
15 5:30, he observed Steven, Ivan and Jennifer walking
16 toward the park. They were on their way toward the
17 park.

18 I submit to you that the testimony of
19 Jennifer Villatoro is entirely implausible on its face.

20 THE COURT: I didn't hear that. Did you say
21 plausible?

22 MR. MILLMAN: Implausible, your Honor.
23 During the summer of 2010, she told that you on a
24 number of occasions my client, Ulises Bonilla who the
25 evidence showed has had a serious girlfriend, 31 years

1 old and a five year old child, approached her, fondled
2 her, kissed her, touched her breasts, touched her
3 vaginal area in broad daylight in front of his own
4 house with other individuals around. Does anybody
5 really believe that that's even plausible? Think about
6 it. That's what she told you. And you can have it
7 read back if you have any question about what it is
8 that she said. Then she testifies that she knew that
9 this was all wrong, and she never said a word about it
10 to her mother, the police or anybody else.

11 Jennifer Villatoro's testimony significantly
12 is also inconsistent with other evidence, a number of
13 items, other evidence in the case, and also which is
14 also significant in evaluating her credibility. First
15 it is inconsistent with the medical records from Nassau
16 University Medical Center. The history indicates
17 nothing about penile penetration. Additionally,
18 there's no notation about any bruising or swollen lips.

19 Her testimony is also inconsistent with the
20 report that she gave to the police on the day of the
21 alleged incident where she said nothing happened. The
22 report she gave to the police five days after she
23 claims this happened, September 29th, 2010, she
24 specifically stated at that time that Ulises never
25 placed his penis inside of her.

1 Again, her testimony for the reasons I stated
2 is also inconsistent with the testimony of Police
3 Officer Bendetto with regard to the bruised and swollen
4 lips like I mentioned before. He was there that day.
5 He saw no indication.

6 Now, Steven and Ivan, her testimony is also
7 inconsistent with her friends, Steven and Ivan. She
8 never ever said at any time that Ulises kissed her or
9 did anything before they got into the stall. Steven
10 and Ivan are telling you that they saw it happened
11 before they got into the stall.

12 Jennifer Villatoro also on cross-examination
13 attempted to explain why she did not tell the police
14 everything on the day of the incident and several days
15 later when she was spoken to. And I submit to you that
16 her explanation as to why she didn't is far from
17 convincing to put it charitably. She said she didn't
18 tell the police what happened because she was worried
19 that she would get in trouble with her mother. That
20 was on the day that the police asked her about it. Yet
21 she did acknowledge on cross-examination that both the
22 police and her mother told her that she should tell
23 everything that happened, that she would not get in
24 trouble. They were both -- and she told you, her
25 mother and the police were both asking her to tell

1 everything that happened that time.

2 Additionally, when Jennifer was at the police
3 station five days later as I mentioned, she told them
4 that Ulises never placed his penis inside of her. Her
5 mother wasn't with her at that time. She wasn't there.

6 But more significantly the testimony of
7 Jennifer, Steven and Ivan completely contradicts three
8 alibi witnesses presented by the defense, one of whom I
9 submit to you is an entirely objective witness not
10 affiliated with anyone in this case. Zeida Bonilla
11 testified she told you that on September 24th of 2010
12 at 4 p.m., she left work with her boyfriend, the
13 defendant, Ulises Bonilla. She told you that she
14 dropped him off at his house at 163 Kinkel Street at
15 4:30 p.m., and she was sure of the time because she
16 leaves work the same time every day. She was working
17 with Ulises. She left work at 4 o'clock, dropped him
18 off at 4:30 at his home.

19 You heard testimony from Diana Bonilla. She
20 told you that at about 4:30, she was at home on the
21 computer at which time she observed Zeida's car pull
22 up, and she observed Ulises get out and enter the
23 house. She told you that after Ulises entered the
24 house that where she was, the position she was in that
25 in order for Ulises to have left that house, there are

1 only two ways he could have left, and both ways he
2 would have had to pass right in front of her, and she
3 told you that he stayed there. She also told you that
4 she then drove with him to pick up her friend, Xiomara,
5 and they went to Tattoo You and arrived there about
6 5:15, 5:30 p.m. She told you that they stayed there
7 until about 7 p.m.

8 Now, Miss Abdi will undoubtedly speak to you
9 about the close affiliation that Diana Bonilla and
10 Zeida Bonilla have with my client. To be fair, they
11 are both people who are close to the defendant. I mean
12 Diana Bonilla is his sister, and Zeida Bonilla is his
13 girlfriend, and they do care about him. Is that a
14 factor that should be taken into account? Sure, it's
15 only fair. But does that mean in and of itself that
16 they are being less than truthful? Absolutely not.
17 You need to look at the totality of the circumstances,
18 ladies and gentlemen, and evaluate the credibility, and
19 in doing so, I would ask you to consider two things:
20 Number one, if one is falsely accused of a crime, they
21 have to account where their whereabouts are at a
22 particular time, isn't there a pretty good chance that
23 the people they were with are people who care about
24 them and that they care about? Probably not going to
25 be strangers.

1 Second of all, and more importantly, I want
2 you to consider the fact that the testimony of Miss
3 Bonilla, Diana Bonilla is corroborated by Evan Grover
4 who is an entirely impartial and objective witness in
5 this case. I mean you heard during his testimony he
6 was subpoenaed to be here. He didn't even want to be
7 here. He is not closely affiliated with anyone in this
8 case. He only met the defendant on one occasion he
9 told you, the night in question that he testified
10 about.

11 Now, you did hear Evan Grover become mixed up
12 on the stand during cross-examination. We heard it.
13 He became confused about the date, and he said a lot of
14 time has passed. That's understandable. It was some
15 time ago. However, it's also clear, and you can have
16 this read back as well, that he reviewed a statement
17 that he gave to my investigator fairly close in time to
18 the night in question, his sworn statement, reviewed
19 it, and after he reviewed it, he was very clear in
20 stating to you that it refreshes his recollection and
21 that on the 24th of September, between 5 and 7 p.m., my
22 client was at Tattoo You.

23 Now, Miss Abdi will also I expect point to
24 testimony on cross-examination by Diana and Zeida
25 Bonilla wherein they didn't recall specifically where

1 they were the day before September 24th and the day
2 after. This, however, September 24th, was not just
3 another day. I think that's clear. Within a certain
4 period of time after the allegations were made by
5 Jennifer Villatoro, Diana, Zeida, they became aware of
6 it within a short time after. At that time they are
7 actually going to say to them the 24th, that night we
8 were at the tattoo place, and they are going to
9 remember that as time goes on because it has a
10 significance.

11 It's not surprise that these witnesses don't
12 remember where they were the day before or the day
13 after. Again, it doesn't have a significance. We all
14 can look back, and there are certain dates we don't
15 remember anything about. There's other dates that are
16 significant.

17 Now, it didn't have any significance to Evan
18 Grover because he is not personally involved, and
19 that's why he didn't initially recall it when he was
20 asked. And that is why he reviewed a statement given
21 much closer in time and why he was able to tell you
22 that on the 24th, between 5 and 7, my client was at
23 Tattoo You.

24 Now, I also want you to consider the
25 testimony of Angel Leon. And we know he is a friend of

1 the victim, Armando Villatoro. He told you that on the
2 evening of September 24th, 2010 that Armando was
3 drinking at the deli and was with him and that Ulises
4 came in after Armando. Now, think about this for a
5 moment. If Ulises had raped Armando's daughter like
6 the DA would have you believe, why would Ulises be the
7 one approaching Armando? Why would Ulises say to
8 Armando, quote, I want to fix things man to man? Why
9 would Ulises be the one always coming after Armando the
10 day of the incident, the night of the stabbing a few
11 days before this happened at the deli, why? I submit
12 to you that the District Attorney's case with regard to
13 the allegations made by Jennifer Villatoro is replete
14 with unreliable testimony, unreliable testimony that is
15 completely inconsistent with the objective and more
16 reliable evidence, her medical records, from Police
17 Officer Bendetto. It's very consistent and it's always
18 entirely consistent with the three alibi witness, most
19 notably Evan Grover.

20 The District Attorney has failed to prove
21 beyond a reasonable doubt that anything inappropriate
22 or sexual ever happened between my client and Jennifer
23 Villatoro. And the only proper verdict with regard to
24 all the charges relating to the allegations made by
25 Jennifer Villatoro is a verdict of not guilty, and that

1 includes the rape charge, that includes the sexual
2 abuse charge and the endangerment charge.

3 I want to talk to you about the charges
4 related to the night of September 28th, 2010, the
5 murder charge and the related charges as well. And as
6 the Assistant DA speaks to you during her closing
7 statement, I want you to ask yourself does the evidence
8 she is talking about just prove his presence there?
9 Does it just prove that he was in a fight with Armando
10 that night? Does it just prove that Armando died of
11 stab wounds? Because the defense doesn't dispute any
12 of those facts.

13 I can make it easier for you, we are not
14 disputing that he was there. We are not disputing
15 there was a fight. We were not disputing Armando died
16 of stab wounds. The issue here is whether or not my
17 client stabbed her and what evidence they have to show
18 that my client stabbed her. We know that Armando was
19 stabbed. I mean there was a mistake. Some people
20 thought he was shot because of the chaos and everything
21 else, but I have never disputed that he was stabbed. I
22 told you that in the opening statement. I think the
23 evidence is clear about that.

24 But the Assistant DA presents witnesses to
25 you who were there at the time, right there when it was

1 happening, and none of them saw my client stabbed.
2 None of them saw my client touch a knife. None of them
3 saw my client make a stabbing motion, and none of them
4 hear Armando cry out in pain while he's fighting with
5 my client. Those facts are undisputed.

6 I submit to you, ladies and gentlemen, that
7 the evidence in this case does not reflect what the
8 Assistant DA told you was a one-on-one fight with
9 everyone else just watching passively. Use your common
10 sense. The police recovered pipes and sticks from the
11 scene, okay, and broken bottles. Do you really think
12 for a second that this is a one-on-one and no one else
13 got involved? Think about it for a moment.

14 And a number of people were even observed
15 getting involved in this from some of the witnesses who
16 testified. We have heard a number of times when a
17 gentleman with a Cincinnati Reds cap who was hitting
18 Armando with a stick who got into it. We also heard
19 testimony about someone wearing a Yankee cap, and there
20 was also testimony that Diana also had gotten in to
21 defend her brother. There was also testimony about
22 Misaël seen fighting with someone by a car. He didn't
23 have a gun out at that time. And we also heard
24 testimony of Henry fighting by the car with someone as
25 well.

1 So the very existence of the items that were
2 recovered by the police in this case, I submit to you,
3 belies the motion that this is a situation where
4 everyone is sitting around watching a fight as if they
5 were watching a one act two-man play front row center
6 seat. They all brought weapons with them to inflict
7 injury. The weapons were recovered from the scene.

8 Counsel would have you believe that all these
9 people just sat there and watched. We know a number of
10 these people were friends with Armando. We know a
11 number of the people were friends with my client. Do
12 you really think they just sat around and watched? Do
13 you really think for a single second that if what the
14 DA is telling you is true that my client stabbed
15 Armando 12 times while everyone's just there and they
16 had weapons and no one else would have gotten in and
17 start hitting him? Do you really think they would have
18 just sat around and watched?

19 And you know what, ladies and gentlemen, if
20 you do believe that this was a one-on-one, it only
21 further proves that my client could not have possibly
22 done this. Think about it, no one ever saw him stab
23 Armando. No one ever saw him with a knife.

24 My client, I submit to you, could not
25 possibly have done this without them having seen it or

1 seen something. Think about it. You saw the knife.
2 It was introduced into evidence. It's not a machete,
3 but it's certainly not small. It's got a seven-inch
4 blade. You can look at it. How could they not see it?
5 The house at 180 Kinkel Street the evidence showed has
6 a motion detector that that goes on when anybody is
7 right in front. The evidence shows you a number of
8 people right in front of it, that light would have been
9 there.

10 Dr. Catanese testified that two of the stab
11 wounds were five inches in depth. They perforated
12 organs, rather, including the right ventricle of the
13 heart. Do you really think that the kind of motion,
14 the kind of action that it takes for that, someone
15 doing that is going to be doing that right in front of
16 10 people watching and no one's going to see it? Think
17 about it for a moment. Had my client stabbed Armando
18 while he was fighting with him, I submit to you that it
19 was clear someone would have seen something more than
20 what we've heard.

21 Now, the events of that night and the fight,
22 we know it culminated in a gunshot. I think all the
23 witnesses agree on that. The gunshot caused chaos and
24 confusion which was followed by numerous individuals
25 dropping weapons, running from the scene, and witnesses

1 thereafter observed Armando walking on his front lawn
2 bleeding. Now, we do know Armando was stabbed to
3 death. No one is disputing that. For one reason or
4 another no one sees Armando get stabbed.

5 But what we do know everyone who was watching
6 my client fight with Armando, if you want to believe
7 what the DA's witnesses said and no one saw anyone
8 stabbing at that time.

9 We also know the witnesses gave us various
10 accounts as to when the gunshot went off and what they
11 observed at that time. But the witnesses are all
12 consistent on one thing, after watching Ulises fight
13 Armando during which time again no one sees him get
14 stabbed, they observed Armando walking on the front
15 lawn bleeding after the gunshot. After the gunshot
16 when everyone went running, weapons were dropped, and
17 there was lot of chaos at that time.

18 Now, numerous people called 911 we know,
19 Detective Cereghino testified, and they all called it
20 in as a shooting. Clearly the witnesses there did not
21 know exactly what happened. Clearly they didn't see
22 any stabbing. Detective Cereghino also testified that
23 the police learned it was a stabbing only because of
24 the wounds in the body. It's a good reason to conclude
25 it was a stabbing, but my point is that they didn't

1 learn it was a stabbing from talking to the witnesses,
2 from a witness saying that it was a stabbing. They
3 knew it was a stabbing from wounds in the body.

4 The fact that everyone thought it was a
5 shooting as a result of the fact that if you think
6 about the testimony of the witnesses, it's clear that
7 the blood on Armando is seen when he's walking onto the
8 front lawn after the gunshot, and the witnesses all say
9 at the time of the gunshot, my client went running with
10 a number of other people. No one sees exactly what
11 happens at that time after the gunshot when they went
12 running.

13 And I submit to you the evidence is much more
14 consistent with the stabbing having taken place
15 immediately after that gunshot. After all, Dr.
16 Catanese even testified that someone would not be able
17 to fight very long with these stab wounds and the
18 amount of blood that was lost.

19 But there are more significant reasons why we
20 know that stabbing did not occur as a result of
21 fighting with my client, and I will talk about those in
22 a moment. No one hears Armando cry out while he was
23 fighting with my client, but they do hear him cry out
24 afterwards when he is on the front lawn.

25 No one sees blood during the time he is

1 fighting with my client. Testimony about seeing blood
2 is after when he is on the front lawn. That's why
3 everyone thought it was a shooting, ladies and
4 gentlemen, because they saw that blood after the
5 gunshot.

6 Now, there was testimony to be fair from
7 Susana Villatoro who indicated at different times that
8 she saw blood. She went back and forth. At one point
9 she said she did see blood before, then she indicated
10 she didn't see blood until afterwards. I submit to you
11 that that testimony is inaccurate whether it's because
12 she's lying or whether or not because she's mistaken.
13 Either way, that testimony is inaccurate. And the
14 reason we know that is all the other witnesses
15 including the Villatoros were very clear in stating
16 that Susana Villatoro did not come out until after the
17 gunshot. She wasn't there until after the gunshot.

18 Oscar told you that he exited at the same
19 time as his mother. As a matter of fact, she told him
20 something's going on out there, and they both went out
21 at the same time.

22 Jocelyn Gonzalez testified that after the
23 fight, the wife came out, and she observed blood on
24 Armando.

25 Oscar Villatoro said that he heard the

1 gunshot, the fighting stopped, and he then saw Armando
2 walk onto the lawn. It was only at that time that he
3 saw blood.

4 Even Angel Leon testified that he never
5 realized Armando was bleeding and never saw it until he
6 was on the lawn, and Armando's wife had not yet
7 arrived. So for whatever reason, I submit to you that
8 any testimony from her that she saw blood beforehand is
9 inaccurate. I think it's clear from the evidence.

10 Now, Nancy Villatoro testified that she was
11 in the car with Jocelyn and that right after the
12 fighting started, Jocelyn pulled the car up in the
13 driveway. She told you at that time she wasn't looking
14 at what was going on behind her. She also told you
15 that when she did turn around at that moment, everyone
16 was fighting. She told you that they all came out from
17 different directions, and they were fighting, and she
18 also told you that a person with a Cincinnati Reds cap
19 threw her on the ground. Do you remember that
20 testimony? Threw her on the ground and held her there.
21 And she said on cross-examination during that time, I
22 didn't see what was going on with Armando. And you
23 remember what else she said? She said right after
24 that, she saw her father in the front of the yard, and
25 at that time she noticed a lot of blood. Because after

1 the gunshot, she could possibly have not seen what
2 happened based on her own testimony.

3 You heard testimony from Jocelyn Gonzalez.
4 She told you that when she saw Armando walking towards
5 the lawn of 180 Kinkel Street that he was walking away
6 from not just Ulises but also Misael and someone called
7 Johnny. And it was only then she told you that she saw
8 for the first time that Armando was bleeding. And she
9 was unable to tell you exactly what happened
10 immediately before that. She was unable to tell you
11 exactly how Armando got to that front lawn.

12 Susana Villatoro had testified that she saw
13 Ulises take off his shirt. But she told you she heard
14 nothing drop to the ground. She saw nothing fall out.

15 And Susana and Jocelyn Gonzalez both
16 testified that Diana was hitting Armando. Well, if,
17 first of all, Diana was hitting Armando and they both
18 said it was to defend her brother, why would he need to
19 be defended if he was stabbing Armando? I mean if this
20 really happened the way they say it did, why would he
21 need to be defended? Their witnesses told you, two of
22 them told you that she came in and she was hitting him.
23 Now, as to which portion of it you choose to believe
24 and reject, that is up to you. However, clearly this
25 could not have been done during the time that my client

1 was fighting Armando. And there's scientific evidence
2 that makes that clear which I will talk about in a
3 moment.

4 But I would like to talk about the one
5 witness and the only witness who creates a link between
6 my client and the stabbing itself, and that's Misael
7 Berrios. I think it says something about a case when
8 the government is relying upon an individual with a
9 character such as this to make out their case. I mean
10 Misael's testimony is entirely unworthy of belief.
11 There's a number of reasons for that. First of all,
12 his testimony directly contradicts the testimony of
13 just about every single witness in this case who that
14 told you they saw Ulises get into Diana's car. They
15 all said that except him. You know what he says? He
16 says no, Ulises didn't get into the car. They ran past
17 Ulises' house, and they both ran to the corner of
18 Broadway and Kinkel. No one else, no one else saw
19 that. Everyone else said they got right into the car.
20 Nancy, Oscar, Susana, Jocelyn and Angel Leon all saw
21 Ulises get into that car with the other individuals and
22 Diana. Yet Misael says no, they didn't get into the
23 car, and they went right to the corner.

24 And then his testimony completely contradicts
25 the DNA evidence collected by the Nassau County Police

1 Department, because he admitted that he initially told
2 the police that when he saw Ulises, he had blood all
3 over his shirt, all over him. But we know that Ulises
4 was seen getting into the front passenger seat of the
5 Acura minutes after the DA tells you that he stabbed
6 Armando 12 times. There's not an ounce of blood, not a
7 shred of blood in the front passenger seat.

8 The prosecution may argue that my client
9 could have removed his shirt or changed his shirt. And
10 that is completely without merit. First, only one of
11 the witnesses, Susana, testified that my client had no
12 shirt on. And if my client did remove his shirt, where
13 did it go? Not a single witness says that he ever went
14 back in his house. They all have him going directly to
15 the car. We know he didn't leave it at the scene. I
16 mean they combed the scene for hours, at least three,
17 four police officers for hours. They would have found
18 the shirt. So where did it go? If he threw it in the
19 car, where is it? There would be more indication of
20 blood in the car. Supposedly he got into the front
21 passenger seat.

22 Additionally, Zeida Bonilla testified that at
23 the end of the evening when Ulises came to her house
24 after this occurred that he was wearing a black shirt,
25 the same black shirt that Nancy told you he was wearing

1 at the beginning of the confrontation, same black shirt
2 that Diana told you he was wearing. Additionally, even
3 if he took off his shirt, how in the world could there
4 be no blood on his body, on his pants, on his shoes?
5 Again, 12 stab wounds, two of them perforated organs,
6 two of them went five inches in-depth. He bled to
7 death.

8 Now, as for this submission that Misael tells
9 you that my client came up to him and admitted to
10 having stabbed Armando, again he claims it took place
11 at the corner of Broadway and Kinkel. Not a single
12 witness sees that. They don't even see them go to that
13 area. They see Ulises get into the car.

14 And Misael's timing certainly has to be
15 questioned. By his own testimony, he had knowledge,
16 relevant knowledge that someone had admitted to killing
17 someone, a homicide. He doesn't say anything to the
18 police that day, the next day. He says nothing to them
19 until October 13. Do you remember what happened on
20 October 13th? Two officers came to his home and
21 requested, asked him to come with them to the police
22 station. And that is the first time that he ever said
23 anything about this.

24 Significantly, the case, they don't even
25 investigate him in connection with the stabbing itself

1 notwithstanding the fact that Misael is seen by a
2 number of witnesses, including two who were presented
3 by the DA during this trial getting into the back seat
4 of the car with where the blood is found. They never
5 take a blood sample from him. Instead what they do,
6 they give him immunity, offer him a deal, testify
7 against my client.

8 But Misael has a number of reasons to lie to
9 you about what happened that night, and I think they
10 were clear during my cross-examination. First of all,
11 he acknowledged people were saying that he stabbed
12 Armando. He previously told the police that he knew
13 his freedom was in jeopardy. He certainly has a
14 significant reason to be less than candid with you.

15 And with regard to credibility, I ask you to
16 consider the fact that Misael Berrios has a string of
17 prior criminal convictions. Those convictions include
18 offenses that are violent such as menacing someone with
19 a box cutter and significantly numerous offenses that
20 go right to credibility, petit larceny, identity theft,
21 fraud. He admitted on the stand when I cross-examined
22 him that he knew when he engaged in these acts they
23 were illegal and they were wrong, and he told you he
24 did them anyway because it served his needs at the
25 time. He told you on the stand that on a number of

Proceedings

1200

1 occasions, knowing something was illegal, he did it
2 anyway because it served his needs at the time.

3 Might he have done that when he testified
4 before you during this trial and told you that my
5 client said, I stabbed him?

6 When you consider Misael's testimony, I want
7 you to ask yourself something. If you were going away
8 for a week, would you give Misael the keys to your home
9 to water your plants while you were away? The answer
10 is clearly no, because this is not someone who can be
11 trusted. Well, the DA is asking you to rely upon the
12 word of this man to make one of the most important
13 decisions that you will ever have to make. And so what
14 you have to ask yourself is can I believe that person,
15 is that person sufficiently trustworthy that I would
16 base an important decision of my life on the quality of
17 that kind of testimony? The fact that person with a
18 criminal record signs a piece of paper to tell the
19 truth, that doesn't mean that he is capable of telling
20 the truth, it doesn't mean that he is telling the
21 truth, because look at all of the things he has done in
22 the past.

23 See, what it comes down to, ladies and
24 gentlemen, is even the other witnesses, there is always
25 a problem with witnesses, human error. That doesn't

1 mean that everything every witness says is inaccurate.
2 My point is that when we hear witness testimony, it can
3 be accurate, or it can be inaccurate. And if it's
4 inaccurate, it can be inaccurate either because of a
5 problem with perception, a problem in memory, lying or
6 perhaps just not accurately recalling something.
7 There's a number of reasons, human error.

8 Ladies and gentlemen, science doesn't lie.
9 Scientific evidence can resolve witness conflicts,
10 corroborate witness accounts, and most importantly, it
11 doesn't lie. No human error, no axe to grind. Science
12 doesn't have an axe to grind. Science doesn't have
13 emotional influences. Science doesn't have motive.
14 Science doesn't lie. And the scientific evidence in
15 this case by the DA supports the position of the
16 defense, not the position of the prosecution.

17 See, ladies and gentlemen, witnesses can say
18 whatever they wish to say to serve their needs. But
19 there's something that can't lie. Forensic evidence in
20 the form of DNA, and the DNA that's introduced in this
21 case told you something that no witness can change.

22 Let's talk about that. Erika Sims testified
23 in meticulous detail about the process and the
24 reliability of a form of science known as DNA. Three
25 witnesses testify about where each of the individuals

1 got into Diana's car right after this happened, three.
2 All three said the same thing, and two of them were
3 prosecution's witnesses. All three said my client got
4 in the front passenger seat of the Acura. And all
5 three said that Misael, Henry and either one or two
6 other individuals got in the back seat of that vehicle
7 where the victim's blood was found.

8 Now, the victim's blood we know was found in
9 two places. One was on the back seat, back seat rest,
10 and the other was on a white cardboard box. And so the
11 victim's blood is found where the other individuals
12 entered the car, not where my client was. And no blood
13 significantly of the victim, no blood of any kind is
14 found on the front passenger seat.

15 Ladies and gentlemen, don't miss that for a
16 second. The DA's claiming that my client had just
17 stabbed Armando 12 times. Again, I don't mean to be
18 repetitive but it's important. Two of those stab
19 wounds went five inches in, five inches in depth
20 perforating organs, perforating the right ventricle of
21 the heart. He bled to death. The amount of the blood,
22 12 times. It's not as if he could have stabbed him and
23 no blood would have started to come out. And after the
24 first or second stab, blood's going to start coming
25 out, and they're saying he did it 12 times. Yet

1 there's not an ounce, a shred of blood on the front
2 passenger seat. That in and of itself, ladies and
3 gentlemen, constitutes reasonable doubt.

4 My client stabs Armando 12 times like they
5 say he did, how could there be no blood in the front
6 passenger seat of that car? That has not been
7 explained to you by the prosecution. And Detective
8 Mazzie testified that there was no sign of any kind
9 that anyone had wiped anything off the seats. So why
10 is the victim's blood in the back seat where the other
11 individuals were? That has not been explained to you
12 either.

13 The prosecution will try and tell you that
14 the presence of Ulises' blood, my client's blood in the
15 rear passenger seat places him in the rear passenger
16 seat and shows that he got into that rear passenger
17 seat, and that's where the victim's blood is, and they
18 will try to make the connection there. But that's not
19 supportive of any of the evidence. That's not
20 supportive of their evidence.

21 One of the problems with that position is
22 that there's an explanation as to why my client's blood
23 is in the back seat, and it's supported by the evidence
24 in this case. It's undisputed that my client injured
25 his finger at work. Zeida Bonilla told you she was

Proceedings

1204

1 there when it happened. She saw blood. Diana Bonilla
2 told you that she saw blood earlier that day
3 approximately 5 o'clock or so when Ulises asked her to
4 take him to the hospital. She saw blood. She gave him
5 the keys. She watched him enter the rear passenger
6 seat.

7 Also even Misael Berrios told you that he
8 observed blood. He went to the hospital with my client
9 and another individual, and he saw blood. The medical
10 records introduced into evidence of my client from
11 Nassau University Medical Center show that he had a
12 laceration, that he was seen there for a laceration.

13 And also the deli video which you saw shows
14 that my client had a bandage on his right hand and the
15 testimony established that my client is right-handed.
16 We will talk about whether it's significant in a
17 moment.

18 Also, the reason that any argument by the
19 Assistant DA that my client got into the rear passenger
20 seat cannot possibly work is that not a single witness
21 ever saw my client get into the back seat. They all
22 saw him get into the front passenger seat, and that
23 includes two of their witnesses.

24 Now, we know that the victim's blood was
25 found on a white cardboard box that was in the back

1 seat of this Acura and that the victim's blood was
2 mixed in with the DNA of another individual.

3 By the way, the police never bothered, even
4 though it's unidentified DNA mixed in with the
5 defendant's blood and even though Misael and Henry are
6 in the back seat of this car right after this happens,
7 never asked for a blood sample to compare it with this
8 unidentified DNA. We don't know who the unidentified
9 person is other than the testimony from Miss Sims being
10 we do know it's not my client's. They did exclude him,
11 and they testified to that.

12 Now, the Assistant DA will attempt to
13 downplay the significance of this. They will -- and
14 there was evidence, and there was testimony that this
15 second contributor of the DNA to the sample could be
16 from skin or sweat that was already on the box. There
17 was testimony to that effect. But number one, they
18 don't know that. She just said it could be. They also
19 said and Miss Sims also said it just as well could have
20 been placed there at the time and could have been
21 someone else's blood. They do say they don't know.
22 But think about this, whether it's blood or sweat or
23 skin fragments, whatever it may, we do know this, an
24 unidentified person's DNA is mixed in with the victim's
25 blood, and this is found on a white cardboard box in

1 the back seat of the car seen fleeing the scene right
2 after the incident. And the fact that they don't know
3 whether the minor contributor's DNA was placed there
4 before or at the same time, even that's all the more
5 reason to test the three additional bloodstains on this
6 same white cardboard box that they never bothered to
7 test.

8 Now, you heard DNA evidence concerning a
9 buccal swab, you know, sample taken from my client
10 matched with -- which came back as a match to the DNA
11 on a beer bottle at the scene and also came back as a
12 match to the do-rag. Ladies and gentlemen, this does
13 nothing more than just establish my client's presence
14 at the scene which is something that we don't dispute.

15 Again, focus on the issue here. It's not
16 about whether or not Armando died of stab wounds. No
17 one disputes that. It's not about whether or not my
18 client was present. It's not about whether or not he
19 had a fight with the victim. It's about whether or not
20 he stabbed him, and that's what they don't have any
21 evidence of.

22 Now, there are a number of items that the
23 police decided not to test, but I want to start with
24 these three remaining bloodstains on the white
25 cardboard box. Erika Sims tells that there was a total

1 of five bloodstains on the box. Two were tested. One
2 came back to just the victim. The other came back to
3 the victim and the unidentified individual.

4 Now, Miss Abdi will tell you that they can't
5 test everything. But you know what, this case is not a
6 matter of low priority, and it was not treated by
7 Nassau homicide as low priority. They combed the scene
8 for hours and hours. They took numerous items. They
9 tested numerous item. They tested blood that was
10 found. They tested blood samples in the street. They
11 tested blood from the knife. They recovered numerous
12 items. Yet when they come to the white cardboard box
13 and there's a sample on that same box that's from two
14 individuals, one whom is identified but we know it's
15 not my client, then they just decide that they are not
16 going to test the other three bloodstains on that white
17 box. They don't bother to test it. And why? Because
18 it's not important enough. Well, ladies and gentlemen,
19 I can tell you one person that it's important enough
20 to, my client.

21 And there was also a plastic bag in the back
22 seat of that same car with a red stain on it, that same
23 car, back seat. They don't bother to test that.

24 There was a watch there found at the scene
25 which had what the detective said appeared to be blood

1 on the face and back of the watch. They don't test
2 that. Now, we do know that that was Armando's watch.
3 That's what Oscar Villatoro testified to. But the fact
4 that it Armando's watch doesn't mean that's only his
5 blood on it and that it can't be blood from somebody
6 else. They didn't bother to test the tire iron either.

7 I mean it is not nit-picking, ladies and
8 gentlemen. This is not Monday morning quarterbacking.
9 These are major evidentiary items that the police
10 recovered apparently because they deemed to be
11 important, because they deemed that it could be
12 evidence, and they don't test it. What would have
13 happened since the time they recovered it and
14 determined that it could be evidence and the time that
15 they made the decision to not test it? If anything,
16 they had more reason to test it now.

17 Now, the white cardboard box, it showed the
18 victim's blood in a place where other individuals were
19 seen, not where my client was seen.

20 I do want to also make something else clear.
21 When I talk about what wasn't tested, what should have
22 been, no one here is claiming a conspiracy. No one is
23 claiming that the police are entering into something
24 sort of intentional. What I'm saying that there was a
25 lapse of judgment and there were certain things that

1 were not tested that should have been tested. But
2 either way, you now don't have that information as to
3 what that blood could be. But we do know that the
4 blood they do have supports the position of the
5 defense, not the position of the prosecution. Science
6 doesn't lie.

7 Erika Sims explained in detail how they can
8 test an item to determine if someone deposited their
9 DNA on a surface which can occur when someone comes in
10 contact with a surface. How can it not be necessary to
11 test these items given the nature of the case, the
12 importance of the case? How can it not be necessary?

13 And by the way, if Ulises had a knife and did
14 stab Armando, would Henry need to be helping him
15 hitting Armando with a stick? Why would Diana need to
16 get involved? According to the testimony, Ulises was
17 never free when the fight started. Not a single
18 witness ever observed a break away or ever observed a
19 hand-to-hand exchange from my client and someone else
20 who could hand a knife to him, no one observed anything
21 like it.

22 You may also want to ask yourself why was the
23 one who stabbed him, the fact that the knife is found
24 in front of his house, the witnesses all told you that
25 numerous people ran right past that area including

Proceedings

1210

1 everyone who got into the car, including Misael and
2 Henry who were seen by all three witnesses that
3 testified about the Acura and who got in, getting into
4 the back seat of the car where the victim's blood was
5 found.

6 I also want to talk now about what I think we
7 all know now, but I want to talk about its importance.
8 There was no blood from my client found on the knife.
9 We know that there was a lot of blood found on the
10 knife, but it was all the victim's. Now, in certain
11 cases that might not be as significant, but here again,
12 it's undisputed that my client suffered a laceration of
13 his finger on his right hand. We know he's
14 right-handed. My client had just returned from the
15 hospital being seen in the emergency room for a
16 laceration, and according to the prosecution, they
17 would have you believe that he grabbed the knife, held
18 the handle hard enough to plunge it into the victim 12
19 times, including, again, I don't mean to be repetitive
20 but it is very important, ladies and gentlemen, two
21 stab wounds that perforate five inches and perforated
22 organs and the right ventricle of the heart. Yet you
23 don't think that would have caused him to bleed?

24 He had a bandage on the finger. You saw it
25 in the deli video, and you can look at it any time you

Proceedings

1211

1 want. It's in evidence. He had a bandage on it
2 because he was bleeding, and this was just less than an
3 hour-and-a-half before this incident occurred. There
4 is not a scintilla of my client's blood on the handle
5 of that knife. There's no cloth that would come from a
6 bandage or a gauze pad, nothing, no cloth, no fibers,
7 anything found in the handle of that knife.

8 And also, quite significantly, not a single
9 speck of my client's blood is found mixed in with the
10 victim's blood on his body, not mixed in with the
11 victim's blood that was on his clothes, that was in his
12 hair. Think about it. If my client was bleeding,
13 which is what they would have you believe because if
14 they are contending my client entered the back
15 passenger seat of an Acura where the victim's blood is
16 which I submit there's no evidence to support, but if
17 they are contending that my client entered the back
18 passenger seat of an Acura and puts the blood there
19 that came back to him at that time, my client had to
20 have been bleeding during the fight. If my client was
21 bleeding during the fight and fighting with Armando at
22 a time when Armando was being stabbed and my client had
23 stabbed Armando like they tell you he did, how could
24 the blood not get mixed in?

25 If my client is bleeding and Armando is

Proceedings

1212

1 bleeding and they are fighting like that and stabbing
2 him 12 times, how is there blood not mixed in anywhere?

3 All of the pieces of evidence that you would
4 expect to see if my client did, in fact, stab the
5 victim, they are not there. Nothing from my client is
6 found mixed with Armando's blood, no skin fragment,
7 body fluid, sweat, saliva, nothing. Nothing from my
8 client is found on the knife, no remains, nothing from
9 the shirt that Susana Villatoro says she saw him
10 holding.

11 And I want you to think about something else
12 when you consider the fact that the DA's office is
13 unable to present to you a shred of evidence, a shred
14 of physical evidence linking my client to the knife of
15 the stabbing. Think about this: The police arrived on
16 this scene almost right after it happened, okay? And,
17 you know, you don't get to Nassau homicide unless you
18 know what are doing, unless you have experience. Now,
19 mistakes may have been made. Things maybe overlooked,
20 but make no mistake about it, you don't get to Nassau
21 Homicide unless you know what you are doing and you
22 know how to obtain evidence.

23 And they were there for at least four hours,
24 three to four police officers during that whole time.
25 They combed the entire scene, ladies and gentlemen.

1 They took everything that they deemed to be relevant.
2 And you know what? They didn't recover a shred of
3 evidence linking my client to the knife, a shred of
4 physical evidence linking my client to the stabbing,
5 nothing.

6 What's more, this wasn't a scene that the
7 witnesses could have altered, that the defendant could
8 have altered, that someone could have changed around.
9 This is a scene that was left because there was a
10 gunshot. Everybody scattered, and that was it. So
11 this scene was left intact, and they got there, and
12 they found nothing.

13 How come my client left not a shred of
14 evidence, no blood in the front passenger seat of the
15 car? Think about it for a moment.

16 The Assistant DA cross-examined a number --
17 withdrawn. Assistant DA asked a number of the
18 witnesses she called about where my client was seen
19 punching Armando. She kept talking about the fact my
20 client's punching Armando in the chest and in the face.
21 I suspect that she will argue do you think his hands
22 were going in generally the same location where the
23 stab wounds are, that that's evidence that my client
24 stabbed him.

25 Don't be fooled for a second, ladies and

1 gentlemen. Think about it, these witnesses said they
2 saw a fistfight where they were watching my client
3 fight with Armando. They all said that. No one
4 wavered on it. No one saw a stabbing motion. No one
5 saw a knife. When people have fist fights, that's
6 generally where they are punching, upper chest, face.
7 I mean the witnesses told you they saw a fistfight.

8 Additionally, the witnesses described nothing
9 different about the way in which my client was hitting
10 Armando versus how Armando was hitting my client. We
11 know -- that we know Armando didn't stab my client.
12 There was no difference between the movements of each
13 of them that was described by these witnesses. What
14 these witnesses saw that the District Attorney's office
15 called is my clients in close proximity to Armando
16 Villatoro, my client punching Armando Villatoro, my
17 client in a fight. That's the entire case that the DA
18 has on the sole issue of my client stabbing Armando
19 Villatoro.

20 I also want to talk to you about the charge
21 of criminal possession of a weapon for the same reasons
22 that I talked to you about. Clearly the evidence of
23 possession of a knife is completely insufficient.
24 There's no evidence of it for the reasons I spoke to
25 you about, and that charge likewise, the only

1 appropriate verdict is not guilty.

2 As for the tire iron, that was another count
3 of weapons possession that was charged here, I submit
4 to you that there is only one witness who even
5 testified that my client ever had possession of a tire
6 iron. And I submit to you that that testimony is
7 entire unreliable for a couple of reasons. Nancy
8 Villatoro is the witness who testifies about my client
9 having possession of that. Yet Jocelyn Gonzalez, she
10 never sees my client touch the tire iron. According to
11 Nancy, my client has this tire iron when he is standing
12 outside of Jocelyn's car outside the driver's, front
13 driver's seat talking to Jocelyn. Jocelyn never sees
14 it. Nancy who is in the passenger seat, she sees it.

15 Second of all, I think that a very
16 significant point was made about Nancy Villatoro's
17 credibility, and there's an exhibit that can remind you
18 of that should you wish to review it, and that's the
19 911 call. And the purpose of that line of
20 cross-examination, ladies and gentlemen, again, had
21 nothing to do with the suggestion that there was a
22 shot, and no one disputes it's a stabbing. What's
23 important about that it's not even the fact that she
24 may have thought it was a shooting. Everybody did.
25 She didn't call in and say my father was sot and leave

1 it at that. Listen to the tape. She called in and
2 said, My father was shot, I know who did it. It was
3 Ulises Bonilla. And I know exactly where he lives.
4 She said that. It's one thing to be mistaken about
5 whether he was shot or stabbed. It's another thing
6 knowing that Ulises Bonilla could not possibly have
7 shot him to say that to the police, My father was shot,
8 Ulises Bonilla did it.

9 She told you on that stand, and I think it
10 was obvious, that she knew when she made the call that
11 there was no way Ulises shot Armando Villatoro. She
12 told you that. She told you that she never saw Ulises
13 with the gun. What's important here is it shows that
14 she is willing to say anything she can to try and pin
15 something on someone that she believes for whatever
16 reason is responsible for her father's death.

17 And even if it's not intentional, ladies and
18 gentlemen, even if you do somehow conclude that there
19 was a mistake, how reliable is her testimony? Can you
20 rely on anything she says about what she saw given that
21 call?

22 Now, soon the Assistant DA will be speaking
23 to you. She will have the opportunity to address the
24 arguments I am making to you. She will have an
25 opportunity to respond to the points that I have made.

1 And because of the way our system is set up, the
2 prosecution goes last, and I do not get an opportunity
3 to respond to the arguments that she makes. Now, I
4 assure you I have a response to each and every argument
5 and point that she is going to raise. But like you, I
6 have to play by the rules. There are certain
7 procedures that have to be followed, and, you know, the
8 prosecution goes last.

9 All I ask though is that when she does raise
10 these arguments, I want you to consider the other side
11 of her argument as well and consider what you might say
12 if you were in my shoes, because it is always important
13 to recognize both sides. And additionally, when she
14 talks, I want you to be sure that you are thinking in
15 your mind whether or not that is consistent with what
16 the evidence is and what the witnesses said.

17 Now, there's a tendency to say to yourself,
18 you know, what if, you know, what if someone gets away
19 with something? These allegations are very serious,
20 and there's a concern about that. But you know what,
21 these allegations are extremely serious. They couldn't
22 be more serious, and that's all the more reason to be
23 sure you follow the instructions of the judge and that
24 you hold the prosecution to their burden of proof.

25 You have rules in the system, ladies and

1 gentlemen, and the rules have to be followed, and
2 there's a reason that the prosecution is required to
3 prove beyond a reasonable doubt. Because I submit to
4 you that this is not the quality of evidence that you
5 have to sustain a guilty verdict. There can be little
6 question of evidence or lack of evidence here creates a
7 doubt that a reasonable person acting in matter of this
8 importance would entertain. Can you honestly say for a
9 single solitary I second that you don't have a
10 reasonable doubt about my client's guilt? Their
11 scientific evidence that they presented supports the
12 defense position. And I'll go further than that,
13 ladies and gentlemen, if it doesn't just support
14 defense position, the absence of any blood on that
15 front passenger seat under these circumstances I submit
16 to you proves not only that the prosecution has not
17 proven guilt beyond a reasonable doubt, it demonstrates
18 that my client could not possibly have done this. My
19 client could not possibly have done this. Nothing was
20 in the front passenger seat. Three witnesses see him
21 get in there. What is he, a magician, he stabs someone
22 12 times, perforates the right ventricle of the heart
23 and minutes later, he gets into the right passenger
24 seat and there's not a spec of blood? How does that
25 happen?

Proceedings

1219

1 Science doesn't lie. No eyewitness prove my
2 client is stabbing or even holding a knife, no physical
3 evidence or DNA evidence connecting him, no connection
4 between my client and the murder weapon which is
5 recovered from the scene without anyone having an
6 opportunity to clean it off, remove it or do anything
7 else. The DA has offered no proof of my client's use
8 of a knife much less proof beyond a reasonable doubt.

9 And so, ladies and gentlemen, I ask that you
10 return the only verdict consistent with the competent
11 and credible evidence, the only verdict consistent with
12 the scientific evidence produced by the District
13 Attorney, and the only verdict consistent with justice,
14 and that is a verdict of not guilty on all of these
15 charges. I thank you for your attention.

16 THE COURT: All right, ladies and gentlemen,
17 the prosecution will sum up next, but we'll take ten
18 minutes at this particular time.

19 (Whereupon, the jury exits the courtroom.)

20 (A recess was taken.)

21 THE COURT: I neglected to ask you, and I'm
22 required to do so by the statute, but if I ever accede
23 to anyone's request on this, I'm sure Judge Marano will
24 relegate me to the family court for the rest of my
25 judicial career, do you have a position as to whether

Proceedings

1220

1 or not the jury should be sequestered, People?

2 MS. ABDI: No.

3 THE COURT: Defendant?

4 MR. MILLMAN: No, your Honor. The only thing
5 I would ask is I don't know if any -- I don't have a
6 position on it, but does any portion of the charge
7 intend to give the jury any press coverage, anything to
8 that effect? I don't know if there is going to be
9 further press coverage.

10 THE COURT: That's part of the charge. They
11 are not to view anything.

12 MR. MILLMAN: I just wanted to be sure, thank
13 you.

14 THE COURT: Bearing in mind that no side has
15 a position, then I'm going to not order sequestration
16 and advise the jury they can go home at the end of the
17 business day.

18 COURT OFFICER: Jury entering.

19 (The jury enters the courtroom.)

20 THE CLERK: Recalling case on trial, People
21 of the State of New York versus Ulises Bonilla,
22 Indictment 202N-2011. Let the record reflect all
23 parties are present, defendant and Spanish interpreter
24 and all jurors.

25 Do both sides consent to the seating and

Proceedings

1221

1 waive a reading of the roll?

2 MS. ABDI: Yes.

3 MR. MILLMAN: Yes.

4 THE CLERK: Thank you.

5 THE COURT: All right, People. Now, it's the
6 District Attorney's turn to give her summation.

7 MS. ABDI: Ladies and gentlemen, first I too
8 want to thank you for the careful care and attention
9 that you have paid to this case. I know you all have
10 lives, all have families, you all have friends. You
11 all have had to put that on hold to do a very important
12 task, and that is to listen to the evidence in this
13 case. And on behalf of the District Attorney's office,
14 I, too, thank you.

15 Because ladies and gentlemen, this is the
16 time now when you use your common sense to evaluate the
17 evidence in this case. You were all selected as jurors
18 because you have it. You are all intelligent people.
19 Use the same common sense that you use every day in
20 evaluating the evidence in this case. Because that's
21 what you are going to decide this case on, the evidence
22 that you heard in this courtroom.

23 You do not decide this case on speculation.
24 You do not decide this case on guesswork. Don't be
25 intimidated by the formal surroundings of the

1 courtroom. If something doesn't make sense to you, if
2 you heard it sitting in your kitchen or sitting in your
3 living room, it doesn't magically make sense when you
4 hear it inside this courtroom. You don't become naive.
5 You don't become gullible just because you are sitting
6 in this courtroom. So use the same common sense that
7 you use in your every day life. And when you do that,
8 you will see that nothing that defense counsel has said
9 makes any sense when you compare it to the evidence in
10 this case, the evidence you heard in this courtroom.

11 There is no question that Armando Villatoro
12 was stabbed to death on September 28th of 2010 in front
13 of his house at 180 Kinkel Street. There is no
14 question. He was not shot. That has been brought up a
15 lot. But ladies and gentlemen, you knew that from day
16 one he was not shot. The only question is was Ulises
17 Bonilla the one who killed him, and the answer to that
18 question, ladies and gentlemen, is yes. That's what
19 the evidence has shown.

20 Did Ulises Bonilla go into that bathroom at
21 Bunkyreid Park on September 24th of 2010 with Jennifer
22 Villatoro? The answer to that question, ladies and
23 gentlemen, is yes, that's what the evidence has shown.
24 And once he got into that bathroom, he had sex with
25 her. That's what the evidence has shown as well,

1 ladies and gentlemen. There is no mystery here.

2 There's no mystery.

3 You've heard a lot of witnesses. You have
4 seen a lot of evidence, and every witness that you have
5 heard gives you one more piece to the case. You take
6 pieces from each witness, and you put it together and
7 when you put it together, a profile emerges, a profile
8 of a killer, ladies and gentlemen. And that's him
9 seated right there, Ulises Bonilla.

10 And the evidence has shown that four days of
11 torment for the Villatoro family, from the rape on
12 Friday all the way to the murder on Tuesday, that is
13 what has emerged from the evidence in this case. He
14 raped Jennifer Villatoro, and then when her father had
15 the nerve to confront him about it, he killed her
16 father. He did.

17 Now, I have the burden of proof in this case.
18 That never shifts. Defense counsel doesn't have to do
19 anything. It's my burden. However, they made some
20 arguments, and they put on a case. And when they put
21 on a case and they put witnesses on, then you should
22 look at those witnesses just as you would my witness.
23 You should scrutinize what their witnesses said.

24 Now, it should come as no surprise to you,
25 ladies and gentlemen, that defense counsel's arguments

1 are centered around one theme which is look at all the
2 things that are not in evidence. Well, what about the
3 match? What about this mystery DNA on the box? What
4 about this, what about that? It should come as no
5 surprise to you that he wants you to focus on the
6 things that are not in evidence, because when you look
7 at what's in evidence, it's devastating. It's
8 devastating evidence against his client. The trail of
9 evidence leads right back to him.

10 Now, defense spent a lot of time talking
11 about this injury to his finger, the injury to the
12 finger, the bandage, this video. Ladies and gentlemen,
13 so what? His finger was injured. I told you about
14 that on my case. We put a witness on, Misael Berrios,
15 who said, Oh, by the way, he had an injured finger. So
16 what? What you also know is that witnesses said he had
17 blood on his face area. So now what does that mean,
18 ladies and gentlemen? What does that mean that he has
19 this injury to the finger? Well, the video that they
20 put in, that video actually corroborates what my
21 witnesses have said, because if you look at the video
22 that's in the bodega, you see clearly the defendant on
23 camera wearing a black do-rag, what he was wearing that
24 night. You see him clearly purchasing Coors Light,
25 which Misael Berrios told you they went to the to deli,

1 they purchased Coors Light, and they went back to the
2 house. It corroborates what my witnesses have told
3 you.

4 Now, did the defendant's blood get in Diana
5 Bonilla's car earlier that day from the injury on his
6 finger? Is that where his blood came from? No. You
7 heard it from Diana Bonilla. She did not drive him to
8 the hospital. She did not pick him up from the
9 hospital. Misael Berrios said he was not driven to the
10 hospital in Diana Bonilla's car. So his blood did not
11 get into that car before the murder. The reason why
12 that blood is in the car is because it was there when
13 he got into that car after the murder.

14 And let's leave for a minute the fact that
15 his blood is in Diana Bonilla's car, because that's not
16 the most important piece of DNA evidence in this case.
17 The most important piece of DNA evidence is the fact
18 that Armando Villatoro's blood is in Diana Bonilla's
19 car. What is it doing there, ladies and gentlemen? It
20 would have no reasonable explanation of being in her
21 car. That's the most important piece of DNA evidence.
22 And the reason why it's so important is because the
23 only way that Armando Villatoro's blood gets in Diana
24 Bonilla's car is if the killer got in that car. And
25 now from all the evidence, ladies and gentlemen, that's

1 Ulises Bonilla's, because the only other blood in the
2 car is Ulises Bonilla's blood.

3 Now, Misael Berrios was not bleeding.
4 There's no witnesses that say he had any blood on him.
5 Diana Bonilla didn't say she was bleeding. Henry
6 Hernandez, no evidence that he was bleeding. The only
7 two people that any of the evidence has said that were
8 bleeding that night is Armando Villatoro and Ulises
9 Bonilla, and that's the blood that was found in Diana
10 Bonilla's car. There's no other explanation for why
11 Armando Villatoro's blood was in that car, and the
12 reason why it was in that car is because it was
13 transferred into the car by the killer when he got in.

14 Now, let me just talk to you a little bit
15 about this supposed mystery DNA. We know there's a
16 major contributor on the box and a minor contributor,
17 and there's a reason why it's called a minor
18 contributor. You can't even test it to anything. But
19 it was tested to Ulises Bonilla, and it said no, that's
20 not him.

21 But we had gone through this in the direct
22 case, ladies and gentlemen. Erika Sima from the DNA
23 lab said that could have been DNA that was on the box
24 mingled with then Armando Villatoro's blood. That's
25 not DNA of the real killer, ladies and gentlemen,

1 because that's not just the evidence you have in this
2 case. You have all of the other witnesses who help to
3 corroborate that the defendant is the killer.

4 Now, what you also heard is that the minor
5 contributor could have been a female. It could have
6 been Diana Bonilla's DNA in that box. It's in her car.

7 What you should look at, ladies and
8 gentlemen, is also the location of the DNA. Defense
9 counsel made much about this location. Well, it
10 clearly proves my guy's not the guy. Meanwhile this
11 discounts all of the other witnesses that said he is
12 the guy. But you have now the DNA, so where was the
13 DNA located? Well, the DNA was located in the back
14 seat of the car. You have Armando's DNA on the back
15 seat of the car. You have his DNA on the box which is
16 next to the back seat of the car, and you also have
17 Ulises Bonilla's DNA on the rear panel of the door and
18 also on the ceiling. You have his DNA on the rear
19 ceiling of the car.

20 Now, what is the significance of that? Well,
21 Diana Bonilla, and I'll get to her in a minute in a
22 little bit more detail, but Diana Bonilla told you a
23 story about how possibly her brother's DNA could have
24 gotten in the car. Remember she told you that story
25 how well she saw him that day earlier, and she, you

1 know, she gave him the keys and he was in the car and
2 she didn't know what he was doing, and then all of a
3 sudden she looked out and he had disappeared. She was
4 going to drive him to the hospital and then
5 disappeared. So what's implication there, ladies and
6 gentlemen? Well, defense put that on so that they
7 could say well, clearly that's where his DNA must have
8 come from, this weird minute-long session in the car,
9 and then he just disappeared. Now, does that make
10 sense, ladies and gentlemen? If your finger is
11 bleeding and you -- your sister's going to drive you to
12 the hospital, when you get in the car, what are you
13 doing? Are you smearing your finger all over the place
14 in your sister's car? No. You're holding it, you're
15 hoping it doesn't bleed because you know your sister's
16 going to get mad. That's not something you do in the
17 car on the way to the hospital. Why would you smear it
18 on two specific locations, the back rear panel and the
19 ceiling? It's not something accidental. What's that
20 consistent with, ladies and gentlemen?

21 Well, what's consistent with that is if
22 you're running away from just stabbing someone, you
23 drop the knife, you run to get into the car, you grab
24 the top to push yourself into the car, get DNA on the
25 top. You get DNA of the person you just killed in the

1 back seat. That's more consistent, that frantic
2 running. That's what most consistent with the way the
3 DNA was left in this case, not the way that Diana
4 Bonilla says.

5 And let me talk to you a little about the
6 witnesses that see him getting in the car. It doesn't
7 matter where they saw him get into the car. It matters
8 that they saw him get into the car. He got into Diana
9 Bonilla's car. It doesn't matter if they say he got
10 into the front passenger seat or the rear passenger
11 seat. They saw him get into the car, and they saw him
12 get into the passenger side.

13 Remember Oscar testified and Nancy testified.
14 They were far away. They were far away from what they
15 were looking at. But what they can say is that they
16 got into the passenger side of the car. And maybe they
17 said it wrong. Maybe it wasn't the front. Maybe it
18 was the rear. Doesn't matter. He got into the car.
19 Plus, ladies and gentlemen --

20 MR. MILLMAN: Just note my objection to the
21 mischaracterization. They didn't say the passenger
22 side. They said passenger rear. That's the basis of
23 my objection.

24 THE COURT: Ladies and gentlemen, your
25 recollection of the facts will govern.

Proceedings

1230

1 MS. ABDI: So it doesn't matter where he got
2 into the car. It matters that it was the passenger
3 side of the car. But really it only matters that he
4 got into that car.

5 Now, ladies and gentlemen, it also doesn't
6 matter that they saw him get into that side of the car,
7 because the important part is that once he got into
8 that car, that's where he initially got into the car.
9 Remember, he was driven away, driven away from the
10 scene. He could have easily changed his position upon
11 leaving the scene.

12 Now, let's talk about Diana Bonilla. That's
13 part of the defense case, Diana Bonilla. Now, you
14 should look at her testimony through a prism, ladies
15 and gentlemen, because she is clearly a biased witness,
16 and she is clearly an interested witness. And you
17 should look at her testimony and evaluate it through a
18 prism, ladies and gentlemen, because she has an extreme
19 motivation to exonerate her brother. She has a motive
20 to be untruthful because everything she says is with
21 this motivation to exonerate her brother. That's what
22 she wants to do.

23 Her testimony about the events of September
24 28th, I'm just talking about September 28th now, her
25 testimony about the events of September 28th of 2010 do

1 not and are not consistent with any other witness in
2 this case, and, in fact, they are not consistent with
3 her brother of statements about what she told the
4 police. She says she didn't even see her brother there
5 until later on when she was driving him away from the
6 scene. She doesn't even see him even while every other
7 person said he was there and he was fighting with
8 Armando. But she says, I didn't even see him there.
9 Once again, she was coming from a place of motivation
10 to exonerate her brother. She is trying to help him
11 out.

12 What else does she say? Oh, I saw five
13 people with masks. Everyone was wearing a mask. You
14 know from the evidence that that's not true. Why would
15 she say that? Once again, trying to exonerate her
16 brother. What else does she say? And this is the only
17 witness that this comes from. She says, Well, Misael
18 Berrios, I saw him, and he was fighting with somebody
19 by a car. No other witness says that. And then she
20 says, And I also saw Henry Hernandez. He was there
21 too, and he was also fighting with somebody. Now, no
22 other witness saw that either.

23 Why is she doing that? Why is she saying
24 this? Well, ladies and gentlemen, she did not tell the
25 police that when she spoke with them the day after the

1 murder on September 29th. She did not mention Misael
2 Berrios. She did not mention Henry Hernandez, and she
3 did not say her brother was anywhere near that fight.
4 She admitted one incident on the stand. Why all of a
5 sudden is she throwing in Misael Berrios and Henry
6 Hernandez? It should become obvious to you now, ladies
7 and gentlemen, if you are looking at it with this prism
8 of motivation to exonerate her brother, she's throwing
9 in other suspects. Oh, by the way, yeah, Misael
10 Berrios was there. He was fighting. And Henry
11 Hernandez was there. She's throwing in suspects to
12 distract attention away from her brother. But you
13 know, ladies and gentlemen, from all the evidence in
14 this case that nobody else saw anyone fighting with
15 Armando but Ulises Bonilla. That is clear from all the
16 evidence in this case.

17 Now, her testimony with respect to September
18 24th of 2010, once again, ladies and gentlemen, it
19 falls away once you look at it through this prism, that
20 she has this motivation to exonerate her brother. So
21 she creates a fake alibi for him, ladies and gentlemen.
22 The most telling part about her story -- well, there's
23 two telling parts. Now, if everyone has had siblings
24 or everyone has children, more than one children, you
25 know, she's 19 years old, 22 years old, you don't pay

1 attention to when your sibling comes home. You don't
2 pay attention to anything that they do in the house
3 especially if it's a boy and girl.

4 She's sitting -- she is sitting at her
5 computer. She pays careful attention to the time that
6 he comes in, pays careful attention outside the window
7 to see how he came in. That is not reasonable, ladies
8 and gentlemen, for anyone, their common sense. If
9 you're in the house with your sister, you don't know
10 when they come in, you don't know when they leave. You
11 don't care. You really don't. And unless you're given
12 a reason to care, unless you're like, well, I have to
13 come up with a fake alibi.

14 The other thing which she said which really
15 should clearly tell you that she is motivated to be
16 untruthful, ladies and gentlemen, there are plenty of
17 times in our life when we have milestones, when we have
18 things that we really remember, the date of your
19 birthday. You may remember the date of your marriage.
20 I'm sure Jennifer Villatoro is going to remember the
21 date her father died. That's a date that you remember.
22 I don't think that a milestone date in anyone's life is
23 the day they introduce their brother to their tattoo
24 artist for the first time. That's not a milestone that
25 you remember. That's not something that you embroider

Proceedings

1234

1 on a pillow as, ah, I remember that date.

2 Remember that's what she said. She said I
3 don't keep tabs on my brother at all. I don't know
4 anything he does. Oh, but that day, September 24th,
5 yes, that was the date I introduced him to Evan Grover
6 for the first time, ladies and gentlemen. If he would
7 have been charged with rape for September 26th, that's
8 the date she would have been up here telling you about.
9 I remember September 26th because that was the day I
10 introduced my brother to my tattoo artist. Ladies and
11 gentlemen, that is completely false. She picked that
12 date because that's the date she had to.

13 And her alibi for him falls apart. It falls
14 apart the minute that Evan Grover hits the stand,
15 ladies and gentlemen. Because contrary to what defense
16 counsel told you, he did not remember anything. He
17 said, I really can't be sure of the date. Of course,
18 why would he pay attention to that date? He had no
19 idea what date it was. And he had no idea what time it
20 was. They could have been -- if they were in that
21 tattoo parlor, he could not tell you for sure that it
22 was September 24th. He could not tell you for sure
23 that it was 5 p.m. to 7 p.m. That statement that he
24 was shown was to refresh his recollection, that's not
25 in evidence. It's what he says in this courtroom that

1 is evidence. It's clear the minute he hit the stand,
2 he said, No, I am not sure. I am not sure that they
3 were there at that time. It falls away, ladies and
4 gentlemen.

5 Zeida Bonilla, clearly the mother, she is the
6 mother of his child, she's an interested witness in
7 this case as well. What she said is she knows for sure
8 that she dropped him off at 4:30. Once again, ladies
9 and gentlemen, there's no reason for her to pay
10 attention to that time. And further questioning, she
11 didn't remember when she got to the daycare, where the
12 daycare was, when she left the daycare.

13 Ladies and gentlemen, it's -- there's been
14 ample evidence that everything that happened in this
15 case is in short, short distance. This is 163 Kinkel
16 Street. This is Bunkyreid Park. This is going down to
17 163 Kinkel Street and Urban Avenue, and that's where
18 they were. Many witnesses have told you, she told you
19 that that's minutes away. You can walk. You can walk
20 to his house from work, walking distance. And, in
21 fact, the daycare is right here, Garden Street. Once
22 again, close proximity, close proximity.

23 What makes more sense, ladies and gentlemen,
24 that he left work and walked home or that he went in
25 the car, drove with her to Garden Street, waited in the

1 car, sat there, drove all the way back to go minutes
2 distance away. But now let's say, ladies and
3 gentlemen, let's say you even believe any of them. It
4 still doesn't mean that he wasn't in that park with
5 Jennifer Villatoro that day, because as you know, they
6 said it was after school, sometime in the vicinity of 4
7 to when the police were called, and he lives about five
8 minutes away from that park by walking distance. Any
9 of those witnesses could have been off by 10, 15
10 minutes. That still would have given him enough time
11 to be in that park, because everything is in such close
12 proximity together. We are not talking about
13 Huntington and Westbury. We are talking about walking
14 distance, minutes away.

15 So I suggest to you that Zeida Bonilla, Diana
16 Bonilla and Evan Grover clearly are not reliable
17 witnesses in this case, and they do not in any way
18 establish a reliable alibi for the defendant, because
19 there are two witnesses who I submit to you were very
20 reliable in this case that told you exactly what
21 happened, and that's Ivan and Steven. And they are
22 children. And I remember when I talked to you about
23 them before in jury selection, children witnesses.

24 And they saw something. They went into that
25 park on Friday, and they saw something. They saw

Proceedings

1237

1 Jennifer and Ulises Bonilla coming from the bathroom.
2 They saw something. And you know what they did. They
3 said something about it. Because when the minute they
4 saw it, they realized something was wrong. Something
5 was wrong. They didn't even know anything really about
6 what happened in the bathroom. They just knew that
7 what they saw, that was not right, and that was on
8 September 24th of 2010.

9 And what did they do? They went right back
10 home and told Jennifer's parents. They told her mother
11 and told her father. They said something. They knew
12 enough to know something's not right here.

13 And how else do you know that that's
14 definitely the date? Because the police were called.
15 The police were called on this date. And they told you
16 that was the date they were called. They said it
17 happened this date, and they responded. And they
18 responded, and they talked to Ivan and Steven. That's
19 how you know that it's the date something happened.
20 They didn't just make it up on a random date. You have
21 the police officers who corroborate that they saw
22 something in that park and were called to the house.
23 That's how you know that something happened that date.

24 These are two little boys, and they have no
25 motivation to be untruthful in this case. They are not

1 going to get up there and make up a story about
2 something that they saw. They did not want to be here.
3 They were nervous. This is something that's not easy
4 at all to do for any witnesses, especially children.

5 And I had a lot of children who testified in
6 this case, and one of them was Jennifer Villatoro.
7 Now, she's an 11 year old now, and I asked you in jury
8 selection, talked to you about the fact that children
9 could have a lot of different responses to things, a
10 lot of difference reactions. Testifying is hard to do.
11 It's hard to do when you are an adult and especially
12 hard to do when you are a child.

13 When she came in here, ladies and gentlemen,
14 she told you what happened to her. She told you, and
15 you heard it from the witness stand. Now, she may have
16 not had the right demeanor at all times. She may have
17 laughed inappropriately. But make no mistake about it,
18 ladies and gentlemen, she is not emotionally mature.
19 She is not a professional witness. She maybe is not as
20 sheltered as other girls her age. Maybe she is not
21 like any other 10 year old girl you know. But make no
22 mistake, ladies and gentlemen, there's one thing about
23 her that you cannot deny was that she was 10 years old
24 on September 24th of 2010, 10 years old, and he was 22.
25 And now she's an 11 year old girl without a father

1 because of the defendant, Ulises Bonilla.

2 So when you talk now about believing Jennifer
3 Villatoro and you heard about she was not forthcoming
4 when the police came to her house and she gave an
5 initial statement to the police right after her dad's
6 death that was not as complete as she told you on the
7 stand, and then she gave another statement to the
8 police which was the complete story, and that was a
9 month later. And defense counsel said, well, clearly
10 she's not capable of belief because she didn't spill
11 her guts from day one. Ladies and gentlemen, I'm sure
12 you can imagine the trauma that she has gone through,
13 the shame that she feels about what happened to her,
14 the embarrassment that she feels about coming into
15 court and having to say what happened to her, having to
16 look at the man that raped her and then killed her
17 father. Can you imagine the guilt that she feels? Can
18 you imagine how she must blame herself for her father's
19 death?

20 So when the police came to her house and she
21 knew she did something wrong, she said I don't want to
22 deal with it, and she didn't. And what prompted her to
23 start speaking? What was the impetus for her to start
24 speaking? It was her father's death. That's maybe
25 when it kicked some sense into her and she said

Proceedings

1240

1 something. But it's a process, ladies and gentlemen,
2 it's a process. And she didn't say everything that
3 happened until a month later. But she told you about
4 it on the stand, and she told you exactly what
5 happened.

6 You know what else jarred you? On October
7 1st, 2010 when she went to the doctor and the doctor,
8 Dr. Pompey, corroborates what she said, said that yes,
9 there is evidence of penetration. Now, she did go to
10 the doctor a week later, but there's no evidence that
11 there was any ejaculation, ladies and gentlemen, so it
12 should come to no shock there's no rape kit done. The
13 doctor said that is not protocol. That's not unusual.
14 There's no evidence that he punched her and kicked her.
15 So yes, there are going to be no external injuries.
16 What she told you on the stand is completely consistent
17 with Dr. Pompey. She said, yes, there's digital
18 penetration and yes, that could be partial penile
19 penetration. It's corroborated by the doctor.

20 And maybe, ladies and gentlemen, that's what
21 also kicked her into gear, that also said to her, yes,
22 something did happen to me and I have to be more
23 truthful about it now, and that's why she gave the
24 statement. She is not making this up. There is no way
25 that anyone would want to make up this story so they

1 can go on the witness stand as an 11 year old girl and
2 talk to strangers about this.

3 Defense counsel said, well, maybe Jennifer
4 clearly her parents -- well, not her parents, her mom
5 told her that she wouldn't get in trouble. The police
6 told her that she wouldn't get in trouble. Ladies and
7 gentlemen, you know from your every day life sometimes
8 it doesn't matter what people tell you. It matters
9 what you feel inside. And if you think that you are
10 going to be judged and if you feel bad about yourself,
11 it doesn't matter that somebody else, authority
12 figurers are telling you that don't worry, we won't
13 think anything less of you, because if you think less
14 of yourself inside, that doesn't go away just because
15 somebody said that to you.

16 She also told you that her relationship with
17 Ulises Bonilla started off slowly. The summer of 2010,
18 end of June to right after Labor Day, that's when they
19 kissed she said several times in front of her house.
20 He would fondle her, touched her breast, touched her
21 butt, touched her vagina. That's what she said, and
22 that's how it started until finally it came to that
23 day, Friday, Bunkyreid Park when he took her into the
24 bathroom and led her into the bathroom. They went into
25 the women's room and into the stall. And it's then

Proceedings

1242

1 that she said they were kissing.

2 Now, remember, she may have thought that he
3 was her boyfriend or something. So she was kissing
4 him. And then she said that he pulled down her pants,
5 her underwear and he put his finger inside her, and she
6 knew that because could feel it. And then she said
7 that he tried to put his penis inside her, and he did
8 put it inside her. It didn't go all the way, but it
9 did go inside her. She felt it. She knew it was there
10 because it hurt. And she pushed him away, and she
11 left. Like I said, she probably would not have wanted
12 to talk about this at all except Ivan and Steven were
13 there, and they saw what happened, and they said
14 something, ladies and gentlemen. That's how you know
15 that something happened that day. You have Ivan and
16 Steven who corroborate Jennifer, and you have Dr.
17 Pompey who corroborated Jennifer.

18 Now, you know the rest of the sad tale from
19 the evidence we heard. Because once Steven and Ivan
20 went back, that's when the spiral began. Because
21 that's when Armando Villatoro found out about it. He
22 went to the deli. He was there. He was with his
23 friend Angel. He had a confrontation with Ulises
24 Bonilla in the deli.

25 Now, obviously you've heard evidence there's

Proceedings

1243

1 obviously some deli on Prospect that everybody in the
2 neighborhood hangs out in. So they encounter
3 themselves there, and that's when they first got into
4 the fight. They got into the fight there. And that's
5 where it started, ladies and gentlemen, because as you
6 know, the defendant was upset about that. He was upset
7 about being confronted. And you now this from Jocelyn
8 Gonzalez, because Jocelyn Gonzalez said, Yeah, on
9 Sunday, he called me, and he said did you hear about
10 what happened at the deli? The father jumped me. I'm
11 going to get him back for that. Right away, that's the
12 conflict, right away, the fight and the conflict, two
13 people who have this conflict. Nobody else has this
14 conflict with Armando. It's Armando and Ulises.

15 And then what do you also know? What you do
16 also know is that Tuesday, Ulises Bonilla is hanging
17 out across the street drinking with his friends.
18 Misael Berrios is one of them. And what do you know?
19 Well, you know from Angel, you know this and you also
20 know from Misael that Ulises Bonilla calls Armando. He
21 calls him, and that's why Armando comes back to his
22 house.

23 So once again, you have this conflict, and
24 now you have Ulises continuing it, continuing it by
25 calling Armando while he is waiting right across the

1 street from her. And once -- and you also know that
2 you Ulises doesn't just leave it there. He went over
3 to Jocelyn and Nancy who were in the car, and he
4 continued to make threats saying to Jocelyn, Would it
5 be okay if I killed your father? Would it be okay if I
6 punched your father? And Nancy heard he wanted to
7 fight the father. Once again, continuing this
8 conflict, continuing this aggression towards Armando
9 Villatoro. There's not one shred of evidence that
10 anyone else had this conflict with Ulises Bonilla.

11 Misael Berrios corroborates what the other
12 witnesses have told you that he was with Ulises Bonilla
13 across the street, and he saw him go over and talk to
14 Jocelyn and Nancy, corroborated.

15 Now, let's talk about the fight, ladies and
16 gentlemen, because there's been a lot of talk about the
17 fact that there's no knife, that nobody saw a knife in
18 his hands. Well, ladies and gentlemen, there is no
19 mystery killer here. There's no mystery killer.
20 There's no mystery DNA, no mystery killer. Nobody else
21 was fighting with Armando Villatoro. Every single
22 witness has told you it was a one-on-one fight. Nobody
23 else got in. They were chest-to-chest. They were
24 face-to-face. They were hugging each other. They were
25 grappling with each other. They were close to each

1 other. Nobody else was fighting with them, one-on-one.

2 Does it matter that nobody saw a knife in his
3 hands? No, and I'll tell you why. The judge is going
4 to tell you about something called circumstantial
5 evidence. It's a charge. What he is going to say is,
6 obviously the judge will have the exact wording of the
7 law, circumstantial evidence is just as good as direct
8 evidence. And with circumstantial evidence, what you
9 should look at it as is think of it as independent
10 little pieces of evidence that when you put together,
11 they are little strands, and you tie them together and
12 you tie them together and you tie them together and
13 they create a knot, and you can't get out of it.

14 And that's exactly what the significance of
15 the knife is in this case. If you look at the
16 circumstantial evidence surrounding that, you will see
17 it's clear that he stabbed him. How do you know that?
18 Well, because all the witnesses said, once again,
19 nobody else was fighting with Ulises Bonilla. It was
20 just Armando Villatoro face-to-face, chest-to-chest
21 grappling, hugging. Nobody else got in. That's what
22 you know.

23 You also know that he had a conflict with
24 Armando Villatoro. He had found out what happened in
25 the park, and they had already had a fight about it.

1 And Ulises Bonilla had just been making threats about
2 it. So once again, another strand of independent
3 evidence circumstantially that ties it all together.

4 The witnesses also said they are making
5 punching motions, punching motions. Nancy said she
6 could see his arm moving back and forth. Now, ladies
7 and gentlemen, if I'm right-handed, and Armando
8 Villatoro obviously was stabbed several times, 12 times
9 on the left-hand side, if you're close to close, if
10 you're close facing and Armando Villatoro was here and
11 he's obviously stabbed in the heart which is on this
12 side, if you're grappling and you're together, you
13 clearly easily with your right hand punching, looked
14 like a punch. Witnesses were in all different
15 locations.

16 If you're so close together and it's dark,
17 it's dark out, if you're close together, and they are
18 fighting, they are moving and they are struggling and
19 you're seeing punching, that's exactly what it looks
20 like to stab somebody 12 times at close range. That's
21 exactly what it looks like. Nobody stabs somebody like
22 this. That just doesn't happen especially when you are
23 stabbing them in their torso and in their abdomen.
24 That's exactly what a stab motion is. It looks exactly
25 like a punch. It's completely consistent with the

1 evidence in this case.

2 You also know another piece of circumstantial
3 evidence that shows you that he had a knife in his hand
4 is that he said to Misael Berrios, I fucked up, I
5 stabbed him, I killed him.

6 Another piece of circumstantial evidence that
7 shows you that he had a knife in his hand is Dr.
8 Catanese, the doctor who said, by the way, yes, he was
9 stabbed 12 times. Twelve times is a lot, ladies and
10 gentlemen, a lot. Do you think somebody else broke in
11 and stabbed him 12 times really quickly? No. It has
12 to be the only one he was fighting with. And you know
13 this because the doctor said you only live -- you could
14 only live untreated a few minutes after you are
15 stabbed. He was stabbed in the heart. You could only
16 live a few minutes.

17 So what does the evidence show? The evidence
18 shows that there was a fight. It was one-on-one.
19 Misael Berrios fires a gun in the air. He then
20 separates from Armando, walks away bleeding, dies.
21 That's the evidence. There is no room for anyone else
22 to get in.

23 And ladies and gentlemen, don't forget this
24 other crucial piece of evidence is that he ran away.
25 He ran towards the car. And guess what? The car is

1 parked by 163 Kinkel Street, and that's exactly where
2 the knife is dropped, right by his house, not by Misael
3 Berrios' house, not by Henry Hernandez' house, not by
4 the mystery killer's house, right by his house. It's
5 clear, why? He drops the knife and gets into the car
6 and goes away.

7 By the way, he didn't come back. He went
8 away. He was -- the police had to look for him. He
9 didn't stay behind to clear anything up. He left.
10 They had to search for him, and they finally caught up
11 with him in Penn Station. Why is that important?
12 Circumstantial evidence, another piece to that knot
13 that ties him to this case. If you didn't stab him,
14 why are you leaving?

15 Somebody who stayed behind, albeit did not
16 come forward right away, is Misael Berrios. It's clear
17 he did some bad things that night. That's not in
18 dispute. I am not condoning his actions. He fired a
19 shot in the air, yes. He gets immunity for that
20 testifying in court. But he spoke to the police
21 October 13th of 2010. He did not have a meeting then.
22 He told the police that Ulises Bonilla told him that I
23 stabbed him, killed him then. That was brought out on
24 cross-examination. He told the police then they didn't
25 threaten him. They did not arrest him. They didn't

1 promise him anything. That's what he told the police
2 then, and that's what he told you now on the stand. Is
3 he the real killer? No. He had a gun, ladies and
4 gentlemen. If he wanted to kill Ulises Bonilla, he
5 would have shot him. He didn't need to stab him with a
6 gun. That doesn't make any sense whatsoever.

7 And how do you know that this was a
8 one-on-one fight with Armando? Defense counsel wants
9 you to believe this is a melee, free-for-all, but it
10 wasn't. And the reason you know it wasn't came from
11 Misael Berrios' own lips. He made sure it was
12 one-on-one. He's the guy with the gun. He made sure
13 that nobody else got in. That's how you know that it
14 was Ulises Bonilla and Armando Villatoro.

15 You are going to hear the law, ladies and
16 gentlemen, the charge of murder in the second degree.
17 There's a component called intent to kill. That's
18 intent. And that's one thing you are going to have to
19 determine whether or not somebody had intent to do
20 something. And you may say, well, I can't determine
21 that. How do I do that? Well, you do it every day in
22 your own life. You determine someone's intent from
23 their actions all the time. Folks, a fly goes by your
24 face, you put your hand up and smack it. What was your
25 intent? Your intent was to smack the fly. That's

1 intent.

2 Intent can be formed very quickly, very
3 quickly. It doesn't mean premeditation. It doesn't
4 mean that when you wake up in the morning, you have to
5 make a list today I am going to kill blah, blah, blah.
6 That's not it. Intent is formed very, very quickly.
7 If I have a pen and I go like this, what was my intent?
8 My intent was to drop the pen. That's formed quickly,
9 and that's how you can determine someone's intention
10 from their action.

11 And the one thing you are going to have to
12 determine is whether or not Ulises Bonilla had the
13 intent to kill. And the evidence shows that he clearly
14 did, he clearly did. He threatened him. He stabbed
15 him 12 times. He stabbed him so hard that he bent the
16 knife. He stabbed him in the heart, in the stomach.
17 He said, I killed him, to his friend. He said to
18 people at the scene, Jocelyn, Nancy, I'm going to fight
19 your father. Would it be okay if I kill your father?
20 He called him over from the scene, and he had this
21 conflict with him. That's intent to kill.

22 You may hear evidence -- a law on a lesser
23 charge, manslaughter in the first degree. That's
24 intent to cause serious physical injury that you cause
25 the death of somebody. That's not in this case, ladies

1 and gentlemen. Because make no mistake, when you stab
2 somebody 12 times -- some of the wounds were five
3 inches deep, wounds in the heart, close quarters. When
4 you stab somebody that you had a conflict with that you
5 wanted to get back at, that's not just intent to cause
6 serious physical injury. That's intent to kill.

7 You're also going to hear the law on rape in
8 the first degree. That's for what he did to Jennifer
9 Villatoro in the bathroom. He took his penis, and he
10 penetrated her vagina with his penis. That comes from
11 her testimony. It also comes from the corroboration by
12 Dr. Pompey. And the judge is going to tell you it
13 doesn't matter if it didn't go all the way in. Any
14 penetration however slight is penetration.

15 You are going to hear about two counts of
16 sexual abuse in the first degree. That's also for the
17 bathroom. One count is for touching Jennifer Villatoro
18 with his finger. The other count is for touching her
19 vagina with his penis.

20 You are also going to hear two counts of
21 criminal possession of a weapon. One is for the knife.
22 One is for the blunt instrument, which is a tire iron
23 that Nancy Villatoro saw Ulises Bonilla hit her father
24 with. And then if you recall, she said she saw her
25 father grab it away, try to hit Ulises with it, and

1 then it was dropped to the ground. That's for that
2 count.

3 Now, does it matter that there was no DNA or
4 fingerprints on the knife? No, ladies and gentlemen.
5 Because contrary to what defense counsel says about no
6 shred of evidence linking him to the knife, you have
7 what we talked about, circumstantial evidence. You
8 have evidence linking him to the murder. They tested
9 for fingerprints. They couldn't find anyone's
10 fingerprints on the knife. He wasn't excluded. They
11 just couldn't find anything to test anything about.
12 DNA evidence, they couldn't find an uncontaminated part
13 of the handle to swab. So they didn't have a clean
14 swab to compare any touch DNA to. So there was no
15 comparison for that.

16 Endangering the welfare of a child, you are
17 going to hear that charge. And that is for the conduct
18 committed from the end of June to the beginning of
19 September, that summer of 2010 that we were talking
20 about when he kissed her and fondled her outside of his
21 house on several occasions. That's where that comes.
22 Those are the charges.

23 Ladies and gentlemen, the judge is going to
24 tell you what the law is. I want you to go back. I
25 want you to deliberate. I want you to review the

1 evidence. I want you to follow the evidence, follow
2 the trail, because it goes right back to the defendant,
3 right back to the defendant. And I'm going to ask you
4 to come back. Defense counsel asked you to do that,
5 but I'm going to ask you to do it, ladies and
6 gentlemen, because you heard the evidence in this case,
7 and you know it's credible, and you know it's long.
8 And I'm going to come back and ask you to only return a
9 verdict that's consistent with justice in this case,
10 and that's guilty of murder, guilty of rape, guilty of
11 two counts of criminal possession of a weapon in the
12 fourth degree, two counts of sexual abuse in the first
13 degree, one count of endangering the welfare of a
14 child. Thank you.

15 THE COURT: Ladies and gentlemen, as I said
16 to you the other day, my charge will be in two parts,
17 one concerning general rules of law applicable to all
18 criminal cases, and the other, the rules of law
19 applicable to the counts in the indictment. What I'm
20 going to do now is I think I have enough time to give
21 you the first part of that charge, then we will break
22 for lunch, and when you come back, I'll give you the
23 law with regard to the counts of the indictment.

24 Members of the jury: It is now my duty to
25 instruct you on the law applicable to this case.

1 Before doing so, however, I would like to commend you
2 for your attention, patience and devotion to your duty
3 as citizens of the community. I would also like to
4 commend the lawyers for all sides for the very able
5 manner which they have carried out their function.

6 We are fast approaching the part of the trial
7 in which you are to take a more active role. Up until
8 this point, you have listened to the evidence as it has
9 been presented. At the conclusion of my instructions
10 on the law, it will become your duty to weigh that
11 evidence and decide what the facts are.

12 Trial by jury in criminal cases forms the
13 very basis of the true administration of justice. It
14 is the procedure by which we calmly, rationally and
15 dispassionately endeavor to ascertain the truth. It is
16 a duty which requires the utmost fairness, honesty and
17 courage. You as jurors and I as the Court have a heavy
18 responsibility to ensure that just result is reached
19 both on the law and the facts.

20 I charge you that the bringing of an
21 indictment by a grand jury does not in any way either
22 prove or tend to prove the defendant's guilt. The
23 indictment cannot be considered by you as any proof
24 whatsoever of the defendant's guilt or any fact tending
25 to prove his guilt. The indictment is only an

1 accusation. It is a charge of criminal activity
2 brought against the defendant brought by the grand jury
3 and served only as the mechanism for bringing the
4 defendant to trial.

5 The fundamental duty of a jury to is
6 determine the facts. You are the fact-finding body,
7 and it is for you and you alone to ascertain where the
8 truth lies. Indeed, you are the sole and exclusive
9 judges of the facts, and in that field, you're supreme.

10 On the other hand and with equal emphasis, I
11 charge you you must accept the law as I give it to you.
12 Whether or not you agree with the law as I give it to
13 you, you are still bound by it.

14 The process by which you will arrive at your
15 verdict requires two steps. First, you must determine
16 from all the evidence, including the exhibits, what the
17 facts are. Second, you must apply the law I give you
18 to the facts as you have determined them to be. The
19 conclusion you then reach will be your verdict.

20 Whatever your verdict may be in this case, it
21 must be by a unanimous vote of the jury. In other
22 words, all 12 of the deliberating jurors must agree on
23 that verdict, be that verdict guilty or not guilty. It
24 is essential that you base your verdict upon the
25 evidence and the evidence alone as you have heard it

1 from the mouths of the witnesses and from the various
2 exhibits which were admitted into evidence.

3 Under no circumstances are you to indulge in
4 speculation or guesswork. You are not to consider
5 anything outside of the evidence.

6 You are not to be affected by sympathy or
7 other considerations outside of the evidence or what
8 the reaction to your verdict may be, whether it be
9 popular or unpopular or whether it pleases or
10 displeases anyone. You must decide the case solely
11 upon the evidence and render a fair and impartial
12 verdict without fear, favor and without sympathy.

13 You may not consider or speculate about
14 matters related to sentence or punishment. That is a
15 matter I alone must determine under our rules of law.

16 I further charge you that you are not to
17 consider or discuss any matters relating to sentence or
18 punishment during your deliberations.

19 As I have said, your verdict is based upon
20 the evidence and the evidence alone. The openings,
21 summations and arguments of counsel are not evidence
22 and may not be considered by you as evidence. They are
23 merely arguments put forth by the respective lawyers in
24 which they are telling you what they believe to be the
25 conclusions you should draw.

1 If the attorneys during the course of their
2 summation should allude to any facts and your
3 recollection of those facts disagrees with the
4 attorneys or my recital of them, disregard what we say.
5 It is your recollection, understanding and evaluation
6 of the facts which governs. You are the sole judges of
7 the facts.

8 At times during the trial I have sustained
9 objections to questions asked without permitting the
10 witness to answer, or where the answer was made,
11 instructed that it be stricken. You may not draw any
12 inference from an unanswered question, nor may you
13 consider testimony which has been stricken in reaching
14 a decision.

15 There are two types of evidence, direct
16 evidence and circumstantial evidence. Evidence is
17 direct when a witness testifies to a fact from his own
18 knowledge or that through one of his five senses,
19 sight, sound, taste, touch and smell. That is direct
20 evidence. Circumstantial evidence is evidence of facts
21 which are inferred, deduced or which otherwise flow
22 from other evidence.

23 There is no distinction between the value or
24 weight of direct and circumstantial evidence. A
25 fingerprint is circumstantial evidence. The testimony

1 of a half blind man or woman is direct evidence. So
2 you have to judge the value of the evidence, be it
3 direct or circumstantial.

4 Let me give you an example of direct and
5 circumstantial evidence. Let's just assume you are a
6 commuter, and you take a train from Penn Station to
7 Massapequa Park, for instance. And while you're going
8 up the platform, you see an individual with --
9 distinguished-looking individual with a white beard,
10 and he looks a lot like Colonel Sanders. Now, I know
11 he's dead, but let's just assume he's alive for this
12 example. And you get on the train with the colonel and
13 talk to him about whether or not you like original
14 recipe or extra crispy, and you talk to him and he
15 talks to you. And if you were asked about that, you
16 could give direct evidence that the colonel was on the
17 train because you spoke to him and saw him.

18 Now, let's just assume that you're walking up
19 the platform and you pass this individual in the white
20 suit, white beard, and you go up to a car and enter a
21 different car. You take the train from Penn Station to
22 Massapequa Park. You get off the train and go to your
23 car. During the time you go to the car at that
24 particular time, you see the same individual you saw on
25 the platform in Penn Station. Now, what is the only

1 logical and reasonable deduction you can make from
2 those circumstances? That the colonel took the train.
3 Is it possible that just after you passed him, he had a
4 second thought, went back to his office, got some
5 papers and drove to Massapequa Park? Maybe it's
6 possible. But is it reasonable? And your job is to
7 deduce reasonable inferences from the circumstances.

8 Once you draw a reasonable inference, you
9 cannot draw a further inference from that inference.
10 In other words, from the circumstances that I've given
11 you, you could deduce that the colonel took the train.
12 You can't further deduce that he had a window seat or
13 an aisle seat or if it's in the middle of the rush
14 hour, even if he had a seat at all.

15 Now, I just gave you an example where a fact
16 can be proved circumstantially by one witness. I don't
17 want to leave you with the assumption that that's
18 always the case. A fact can be proved from the
19 testimony of many witnesses.

20 Let's just assume there is some robbery of a
21 convenience store say in Port Washington, and the
22 police come, and the store clerk, he asks the store
23 clerk, Who robbed you? The store clerk says, I don't
24 know, I was just so scared, I didn't know. The only
25 thing I can tell you is that he had a chipped tooth and

1 a silver gun. That's what I saw. I had my eyes fixed
2 on that silver gun. Another witness says, I can't tell
3 you what he looked like, but I know I saw his hand, and
4 he had a tattoo on the hand, and the gun was a
5 revolver. Another witness says, I don't know what he
6 looked like, but I know when he walked out of the
7 store, he had a slight limp. And another witness might
8 say, I saw him get into blue Chevy with the first three
9 letters of the license plate. Now, ladies and
10 gentlemen, each one of those individual circumstances
11 may not be sufficient to establish the fact of identity
12 beyond a reasonable doubt. But when you examine them
13 together and accumulate them and accumulate them, that
14 the totality of the circumstantial evidence may be
15 sufficient for you to establish a fact beyond a
16 reasonable doubt by circumstantial evidence.

17 Although you may consider only the testimony
18 of witnesses as you have heard in this courtroom and
19 the exhibits which have been admitted in evidence, the
20 law does not require you to accept all of the evidence
21 I have admitted even though it is competent. In
22 determining what evidence you will accept, you must
23 make your own evaluation of the testimony given by each
24 of the witnesses and determine the degree or weight you
25 choose to give to that testimony.

1 There is no magic formula for doing this.
2 Each of you bring to this courtroom all of the
3 knowledge, experience and background you have acquired
4 in your everyday lives of sizing up people and deciding
5 whether or not they are telling the truth. These same
6 tests that you use in your everyday affairs are the
7 tests you should apply to your deliberations.

8 In reaching your conclusions as to what
9 weight you will give to the testimony of any witness,
10 you may take into the consideration that witness's
11 demeanor on the stand and manner of testifying, the
12 witness's relationship to the case, the interest in the
13 outcome of the case, the motive, if any, the witness
14 may have for testifying truthfully or falsely, the
15 probability of the story told by the witness, any prior
16 acts of misconduct or crimes committed by the witness,
17 any prior inconsistent statements made by the witness,
18 the physical condition of the witness at the time that
19 the alleged incidents and any other factor which you
20 think in your judgment assists you in arriving at a
21 witness's credibility including whether or not a
22 witness made a timely complaint or made an early
23 outcry.

24 We went over this in voir dire at length.
25 Police officers testified in this case. You should use

1 the same tests in evaluating their testimony as you
2 will use in evaluating the testimony of any other
3 witness. In other words, the mere fact that a witness
4 is a police officer does not require that their
5 testimony be given any greater or lesser credibility.
6 However, evidence of training or experience may be
7 considered by you in reaching your determination.

8 You must keep in mind that the weight you
9 give to the evidence is not dependent upon the number
10 of witnesses to a given fact but rather upon the
11 credibility you give to the testimony of each witness
12 to that fact. If you find any witness has willfully
13 testified falsely as to any material fact, you may
14 completely disregard that testimony, or you may, if you
15 wish, give credence to so much of that testimony as you
16 find supported by the other credible testimony given by
17 such witness. You may accept all of the witness's
18 testimony, accept that which you have found he has
19 testified falsely to or none of it or part of it. That
20 is entirely for you to determine.

21 Questions are not evidence. It is the
22 answers given to the questions that constitute
23 evidence.

24 An inference or suggestion contained in the
25 question does not render such a fact when the answer

1 negates the inference or suggestion.

2 If you find you're unable to agree as to what
3 the testimony of any particular witness was or an
4 explanation as to the law, you can write me a note, and
5 I will reread the testimony or further give you
6 explanations in this regard.

7 If you wish to see any of the exhibits
8 introduced into evidence, just write a note, and they
9 will be given to you in your deliberation room.

10 I want to tell you a little bit now about
11 procedure. If you write me a note, there are times
12 when I can give you an immediate answer. There may not
13 be times -- there may be times when I cannot give you
14 an immediate answer. By due process of law, your notes
15 must be shown to counsel, and they have to have -- they
16 may have an input as to what it means in your note, and
17 I may have to rule on it.

18 Let me give you an example. Suppose an
19 incident happens today, and the time of the incident
20 today is 4:30 p.m. in a parking lot which has no
21 unnatural lighting. So the jury asks a question can we
22 have the testimony with regard to the lighting
23 conditions read back? So we go through the record, and
24 there is a portion of the testimony that says it was
25 cloudy out. Now, cloudy at 4:30 in June may not have a

1 bearing on lighting conditions. Cloudy at 4:30 in
2 December may have a bearing on lighting conditions.
3 And I would have to rule on that, ladies and gentlemen.
4 So there may not always be an immediate answer to your
5 question. Sometimes it takes some time. Sometimes it
6 takes the reporter quite some time to cull through the
7 record to see if a specific question is asked.

8 We now turn to some constitutional safeguards
9 that surround every person accused of a crime, the
10 defendant has pleaded not guilty, and by that plea of
11 not guilty, puts in issue each and every allegation
12 charged in the indictment.

13 A fundamental legal principle which is
14 applicable in every criminal case is known as the
15 presumption of innocence. The law provides that the
16 defendant starts this trial with the presumption in his
17 favor that he is innocent of the crimes alleged. This
18 presumption of innocence follows him throughout the
19 entire trial and remains with him until such time that
20 you found that it has been overcome by proof of guilt
21 beyond a reasonable doubt.

22 The trial began with no evidence against the
23 defendant, and the presumption of innocence standing
24 alone would require you to find the defendant not
25 guilty unless you find that the People have proven

1 beyond a reasonable doubt that the defendant is guilty
2 of the crimes charged.

3 A plea of not guilty is a denial of each and
4 every material allegation in the indictment. Under our
5 system of law, the People have the burden of proving to
6 your satisfaction beyond a reasonable doubt each and
7 every element of the crimes which the defendant is
8 charged. No defendant is required to prove his
9 innocence. The defendant does not have to prove
10 anything.

11 The defendant did not testify in this case.
12 I charge you that the fact that he did not testify is
13 not a factor from which any inference unfavorable to
14 the defendant may be drawn.

15 The standard of proof required in every
16 case -- in every criminal case is proof of guilt beyond
17 a reasonable doubt. That does not require the People
18 to prove the defendant guilty beyond all possibility of
19 doubt or beyond a shadow of a doubt. It requires the
20 People to establish the defendant's guilt only beyond a
21 reasonable doubt.

22 Therefore, before you may convict the
23 defendant, each of you must be satisfied that the
24 credibility of evidence is sufficient to convince you
25 beyond a reasonable doubt that the defendant is, in

1 fact, guilty and the defendant is, in fact, the person
2 who committed the crimes charged.

3 A doubt of the defendant's guilt to be a
4 reasonable doubt must be a doubt for which some reason
5 can be given. The doubt to be reasonable, therefore,
6 must arise because of the nature and quality of the
7 evidence in the case or from the lack or insufficiency
8 of the evidence in the case. The doubt to be a
9 reasonable doubt should be one that a reasonable
10 person, acting in a matter of this importance, would be
11 likely to entertain because of the evidence or because
12 of the lack or insufficiency of the evidence in the
13 case.

14 A reasonable doubt, our law says, is an
15 actual doubt, one which you are conscious of having in
16 your mind after you have considered all of the evidence
17 or lack of evidence.

18 If, after doing so, you then feel uncertain
19 and are not fully convinced of the defendant's guilt
20 and you are also satisfied that you are entertaining
21 such a doubt as a reasonable person should in a matter
22 of this importance, then that is a reasonable doubt of
23 which the defendant is entitled to the benefit.

24 Therefore, the first duty of each juror is to
25 consider and weigh all the evidence in the case and

1 decide which evidence you believe is credible and
2 worthy of consideration. The next duty of each juror
3 is to determine whether or not he, in fact, or he or
4 she, in fact, has a reasonable doubt of the defendant's
5 guilt. If in so doing you find the People have not
6 proven the defendant's guilt beyond a reasonable doubt,
7 you must find the defendant not guilty. On the other
8 hand, if you are satisfied that the People have proven
9 the defendant's guilt beyond a reasonable doubt, it is
10 equally your duty to find the defendant guilty.

11 You have heard testimony about the attorneys,
12 both the prosecutor and the defense, speaking to
13 various witnesses on this particular case and preparing
14 them for their testimony. The law does not prohibit
15 that, and there's nothing wrong in doing so. In fact,
16 in certain instances it may be wrong if you don't do
17 it, but there's nothing wrong with that.

18 Now, with regard to the September 24th
19 allegation, the sexual incidents, the defendant has
20 raised an alibi. He contends that he could not have
21 committed the crime charged because he was elsewhere at
22 the time of commission. Although the defendant raised
23 the alibi, the defendant has no burden to prove it. In
24 fact, even if you find that the alibi is false, you
25 must not for that reason alone find the defendant

1 guilty. To do that would be to shift the burden of
2 proof from the People to the defendant. The People are
3 required to prove beyond a reasonable doubt all of the
4 evidence -- on all of the evidence presented that the
5 defendant was the person who committed the crime, and
6 therefore, was not elsewhere at the time of the
7 commission. To prove that, the People may rely upon
8 the evidence they have offered to establish beyond a
9 reasonable doubt that the defendant committed the
10 crime. The People are not required to present
11 additional evidence that independently proves that the
12 defendant was not where he or she claims to have been
13 at the time of the crime.

14 Thus, if you find from the evidence that the
15 People have proven beyond a reasonable doubt that the
16 defendant committed the crime charged, you may find
17 from that same evidence that the People have proven
18 beyond a reasonable doubt that the defendant was not
19 elsewhere at the time of the commission of the crime.
20 If you are not so satisfied that the People have proven
21 beyond a reasonable doubt that the defendant was the
22 person who committed the crime, you must find the
23 defendant not guilty.

24 This is the last thing I will read before we
25 break for lunch. In this case, the People contend that

1 the defendant fled the scene and the jurisdiction after
2 the commission of the event, and as such, contend that
3 that conduct demonstrates a consciousness of guilt.
4 You must decide first whether or not you believe that
5 the conduct took place, and second, if it did take
6 place, whether it demonstrates consciousness of guilt
7 upon the part of the defendant.

8 In determining whether or not the conduct
9 demonstrates consciousness of guilt, you must consider
10 whether the conduct has an innocent explanation.
11 Common experience shows that an innocent person who
12 finds himself under suspicion may resort to conduct
13 which gives the appearance of guilt. The weight and
14 the importance you give to evidence offered to show
15 consciousness of guilt depends upon the facts of the
16 case. Sometimes such evidence is only of slight value,
17 and standing alone, it may never be the basis for a
18 finding of guilt.

19 Okay. We are now going to break for lunch,
20 and we will resume at 2 o'clock at which time I will
21 give you the law with regard to the charges contained
22 in the indictment.

23 Remember all of the admonitions I have given
24 you. They are especially of importance now, but you
25 are bound by those admonitions.

Proceedings

1270

1 Don't talk to anybody about this case.

2 Don't read anything about it.

3 Don't let anybody talk to you about it, and
4 keep an open mind until the case has been given to you
5 for deliberation which, I believe, will be by 3 o'clock
6 this afternoon.

7 (Whereupon, the jury exits the courtroom.)

8 THE COURT: After I get through with the
9 charge, I will ask the People and the defendant if they
10 have any exceptions or if they have any further
11 requests. If the answer to that -- those questions is
12 in any way yes, we'll discuss them over there at the
13 side. And if they need additional discussion on a more
14 lengthy basis, I'll have to excuse the jury.

15 (Whereupon, a luncheon recess was taken.)
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Proceedings

1271

1 A F T E R N O O N S E S S I O N

2 THE CLERK: Recalling case on trial, People
3 of the State of New York verse Ulises Bonilla,
4 Indictment 202N of 2011. All parties present including
5 the defendant and Spanish interpreter. There are no
6 jurors present at this time.

7 THE COURT: The record should reflect that I
8 neglected to give an expert witness charge. I will do
9 that first right now.

10 MR. MILLMAN: But you still wanted us to wait
11 until you were done if there were any exceptions?

12 THE COURT: That's correct.

13 MR. MILLMAN: That's fine.

14 COURT OFFICER: Jury entering.

15 (The jury enters the courtroom.)

16 THE CLERK: Let the record reflect the
17 presentation of all jurors. Do both sides waive a
18 reading of the roll and consent to the seating?

19 MS. ABDI: Yes.

20 MR. MILLMAN: Yes.

21 THE COURT: Ladies and gentlemen, I neglected
22 to give you an expert witness charge as part of the
23 general precharge. I'm going to do that now.

24 You will recall that certain witnesses
25 testified and gave an opinion on their fields of

1 expertise. Ordinarily a witness is limited to
2 testifying about facts and is not permitted to give an
3 opinion. Where, however, scientific, medical,
4 technical or other specialized knowledge will help the
5 jury understand the evidence or to determine a fact in
6 issue, a witness with expertise in a specialized field
7 may render opinions about such matters. You should
8 evaluate the testimony of any such witness just as you
9 would the testimony of any other witness. You may
10 accept or reject such testimony in whole or in part
11 just as you may with respect to the testimony of any
12 other witness.

13 In deciding whether or not to accept such
14 testimony, you should consider the following, and this
15 is not all inclusive: The qualifications and
16 believability of the witness, the facts and other
17 circumstances upon which the witness's opinion was
18 based, the accuracy or inaccuracy of any assumed or
19 hypothetical fact upon which the opinion was based, the
20 reasons given for the witness's opinion and whether or
21 not the witness's opinion is consistent or inconsistent
22 with the other evidence in the case.

23 Now, I'm going to get into the specific
24 charges with regard to which the defendant is accused.
25 There are a number of charges which require a specific

1 intent. Before I get into those charges, I would like
2 to give you a charge on intent. Intent does not
3 require premeditation. In other words, intent does not
4 require advanced planning nor is it necessary that the
5 intent be in the person's mind for any particular
6 period of time. The intent can be formed and need only
7 exist at the very moment the person engages in the
8 prohibited conduct or acts to cause the prohibited
9 result and not at an earlier time.

10 The question naturally arises as to how to
11 determine whether or not the defendant had the intent
12 required for the commission of a crime. To make that
13 determination in this case, you must decide if the
14 required intent can be inferred beyond a reasonable
15 doubt from the proven facts. In doing so, you may
16 consider the person's conduct and all of the
17 circumstances surrounding that conduct, including but
18 not limited to the facts, what, if anything, did the
19 person do or say, what result, if any, followed from
20 the person's conduct, was that result the natural,
21 necessary and probable consequence of that conduct.

22 Therefore, in this case -- all right, now,
23 you also are permitted but not required to draw the
24 inference that a person intends the reasonable and
25 logical consequence of his actions. Therefore, in this

1 case from the facts you find to have been proven you
2 decide whether or not you can infer beyond a reasonable
3 doubt that the defendant had the intent required for
4 the commission of the crime.

5 Now, let me explain motive and the difference
6 between intent and motive. Intent means a conscious
7 objective or purpose. A person commits a criminal act
8 with intent when that person's conscious objective or
9 purpose is to engage in the act which the law forbids
10 or to bring about a unlawful result. Motive, on the
11 other hand, is the reason why a person chooses to
12 engage in criminal conduct. If intent is an element of
13 the crime charged, that element must be proved by the
14 People beyond a reasonable doubt. Motive, however, is
15 not an element of the crime charged. Therefore, the
16 People are not required to prove a motive for the
17 commission of the crimes charged. Nevertheless,
18 evidence of a motive of lack of motive can and may be
19 considered by jury.

20 For example, if you find from the evidence
21 that the defendant had a motive to commit the crime
22 charged, that is a circumstance, remember
23 circumstantial evidence? That is a circumstance you
24 may wish to consider as tending to support a finding of
25 guilt. On the other hand, if the proof established

1 that the defendant had no motive to commit the crime
2 charged, this is called a circumstance you may wish to
3 consider in deciding whether the defendant is guilty or
4 is not guilty of the crime charged.

5 The first count of the indictment is murder
6 in the second degree. Under our law, a person is
7 guilty of murder in the second degree when, with intent
8 to cause the death of another person, he causes the
9 death of such person.

10 I have already defined intent to you, but it
11 basically means a conscious objective or purpose.
12 Thus, a persons acts with intent to cause the death of
13 another when that person's conduct or objective is to
14 cause the death of another.

15 In order for you to find the defendant guilty
16 of this crime, the People are required to prove from
17 all of the evidence in the case beyond a reasonable
18 doubt both of the following two elements: That on or
19 about September 28th, 2010, in the County of Nassau,
20 Ulises Bonilla caused the death Armando Villatoro, and
21 two, the defendant did so with the intent to cause the
22 death of Armando Villatoro.

23 Therefore, if you find the People have not
24 proven beyond a reasonable doubt either one or both of
25 these elements, you must find the defendant not guilty

1 of the crime of murder in the second degree charged in
2 the first count. On the other hand, if you find that
3 the People have proved beyond a reasonable doubt both
4 of those elements, it is equally your duty to find the
5 defendant guilty of the crime of murder the second
6 degree as charged in the first count.

7 Now, I'm going to give you under the first
8 count the lesser included charge of manslaughter in the
9 first degree for your consideration only if you find
10 the defendant not guilty of murder in the second
11 degree.

12 I want you to know I am going to give you a
13 possible verdict sheet to help you with your process.
14 It will make it easier.

15 Let me define for you manslaughter in the
16 first degree. Under our law, a person is guilty
17 manslaughter in the first degree when, with intent to
18 cause serious physical injury to another person, he
19 causes the death of such person.

20 I have previously defined intent. What is
21 serious physical injury? Serious physical injury means
22 impairment of a person's physical condition which
23 creates a substantial risk of death or serious and
24 protracted disfigurement, impairment of health or
25 protracted loss or impairment of any bodily organ.

1 Well, you can see that the difference between
2 murder in the second degree and manslaughter in the
3 first degree is the element of intent. Murder in the
4 second degree requires intent to kill or cause the
5 death, and manslaughter in the first degree requires an
6 intent to cause serious physical injury to.

7 In order for you to find the defendant guilty
8 of this crime, the People are required to prove from
9 all the evidence in the case beyond a reasonable doubt
10 both of the following two elements: That on or about
11 September 28th, 2010, in the County of Nassau, the
12 defendant, Ulises Bonilla, caused the death of Armando
13 Villatoro, and two, the defendant did so with the
14 intent to cause serious physical injury to Armando
15 Villatoro.

16 Therefore, if you find the People have not
17 proven beyond a reasonable doubt either one or both of
18 those elements, you must find the defendant not guilty
19 of the crime of manslaughter in the first degree. On
20 the other hand, if you find that the People have proven
21 beyond a reasonable doubt both of these elements, it is
22 equally your duty to find the defendant guilty of the
23 crime of manslaughter in the first degree.

24 Under the second count, second count is rape
25 in the first degree. Under our law, a person is guilty

1 of rape in the first degree when he engages in sexual
2 intercourse with another person who is less than 11
3 years old.

4 Under our law, it is also an element of this
5 offense that the sexual intercourse was committed
6 without the consent of that other person. Sexual
7 intercourse takes place without a person's consent when
8 that person is deemed by law to have been incapable of
9 consent. Under our law, a person is deemed incapable
10 of consenting to sexual intercourse when she is less
11 than 11 years old. Thus, sexual intercourse with such
12 person is always deemed to be without the person's
13 consent, even if, in fact, that person did consent.

14 It is not a defense to this charge that the
15 actor or did not know that the person whom the actor
16 had sexual intercourse was less than 11 years old or
17 that the actor believed that such person was 11 years
18 old more on the date of the crime.

19 The term sexual intercourse used in the
20 definition of this crime has its own special meaning.
21 Sexual intercourse means any penetration, however
22 slight, of the penis into the vaginal opening. In
23 other words, any penetration of the penis into the
24 vaginal opening regardless of the distance of
25 penetration constitutes sexual intercourse. Sexual

1 intercourse does not necessarily require erection of
2 the penis, emission or orgasm.

3 In order for you to find the defendant guilty
4 of this crime, the People are required to prove from
5 all of the evidence in the case beyond a reasonable
6 doubt both of the following two elements, that on or
7 about September 24th, 2010, in the County of Nassau,
8 the defendant, Ulises Bonilla, engaged in sexual
9 intercourse with Jennifer Villatoro and Jennifer
10 Villatoro was less than 11 years old.

11 Therefore, if you find that the People have
12 not proven beyond a reasonable doubt either one or both
13 of those elements, you must find the defendant not
14 guilty of the crime of rape in the first degree as
15 charged in the second count. On the other hand, if you
16 find the People have proven beyond a reasonable doubt
17 both of those elements, you must find the defendant
18 guilty of the crime of rape in the first degree as
19 charged in the second count. I don't want you to leave
20 this courtroom thinking that the age of consent in the
21 State of New York is 11 years old. It is not. It's
22 17. But there are certain degrees of crimes as to the
23 age of the victim.

24 Third count, this count is sexual abuse in
25 the first degree. Under our law, a person is guilty of

1 sexual abuse in the first degree when he subjects
2 another person to sexual contact when that other person
3 is less than 11 years old.

4 Under our law, it is also an element of this
5 crime that the sexual contact was committed without the
6 consent of that other person. Sexual contact takes
7 place without a person's consent when that person is
8 deemed by law to be incapable of consent. As stated
9 above, under our law, a person is deemed incapable of
10 consenting to sexual contact when she is less than 11
11 years. Thus, sexual contact with such a person is
12 always deemed to be without that person's consent even
13 if, in fact, that person did consent.

14 The term sexual contact used in the
15 definition of this crime has its own special meaning in
16 our law. Sexual contact means any touching of the
17 sexual or other intimate parts of a person for the
18 purpose of gratifying the sexual desire of either
19 party. It includes the touching of the actor by the
20 victim as well as the touching of the victim by the
21 actor, whether directly or through clothing as well as
22 the emission of ejaculate by the actor upon any part of
23 the victim clothed or unclothed.

24 In order for you to find the defendant guilty
25 of this crime, the People are required to prove from

1 all of the evidence in the case beyond a reasonable
2 doubt both of the follow two elements: That on or
3 about September 24, 2010, in the County of Nassau, the
4 defendant, Ulises Bonilla, subjected Jennifer Villatoro
5 to sexual contact and Jennifer Villatoro was less than
6 11 years old.

7 Therefore, if you find the People have not
8 proven beyond a reasonable doubt either one or both of
9 these elements, you must find the defendant not guilty
10 of the crime of sexual abuse in the first degree as
11 charged in the third count. On the other hand, if you
12 find the People have proven beyond a reasonable doubt
13 both of these elements, it is equally your duty to find
14 the defendant guilty of the crime of sexual abuse in
15 the first degree as charged in the third count.

16 The fourth count is sexual abuse in the first
17 degree. Under our law, a person is guilty of sexual
18 abuse in the first degree when he subjects another
19 person to sexual conduct when the other person is less
20 than 11 years old.

21 Under our law, it is also an element of this
22 offense that the sexual conduct was committed without
23 the consent of that other person. Sexual contact takes
24 place without the person's consent when that person is
25 deemed by law to be incapable of consent. As stated

1 above, under our law, a person is deemed incapable of
2 consenting to sexual conduct when she is less than 11
3 years old.

4 Thus, sexual contact with such person is
5 always deemed to be without consent even, in fact, if
6 the person did consent. It is not a defense to this
7 charge that the actor did not know the person with whom
8 the actor had sexual contact was less than 11 years old
9 or the actor believed such person was 11 years old or
10 more on the day of incident.

11 In order for you to find the defendant guilty
12 of this crime, the People are required to prove from
13 all of the evidence in the case beyond a reasonable
14 doubt both of the following two elements: That on or
15 about September 24th, 2010, the defendant, Ulises
16 Bonilla, subjected Jennifer Villatoro to sexual contact
17 and Jennifer Villatoro is less than 11 years old.

18 Therefore, if you find the People have not
19 proven beyond a reasonable doubt either one or both of
20 these elements, you must find the defendant not guilty
21 of the crime of sexual abuse in the first degree as
22 charged in the fourth count. On the other hand, if you
23 find the People have proven beyond a reasonable doubt
24 both of those elements, you must -- it is equally your
25 duty to find the defendant guilty of the crime of

1 sexual abuse in the first degree as charged in the
2 fourth count.

3 Now, the fifth count and the sixth count
4 concern possession of weapons with the intent to use
5 unlawfully. Under the fifth count, that weapon is a
6 sharp object which in this case has been referenced to
7 a knife. Under the sixth count, that reference is in
8 regard to a blunt instrument which is referenced to a
9 tire iron. So I am not going to go through this twice,
10 but you will see the logic of it when comes out.

11 The fifth count of the indictment is criminal
12 possession of a weapon in the fourth degree. Under our
13 law, a person is guilty of criminal possession of a
14 weapon in the fourth degree when that person knowingly
15 possesses a dagger or dangerous knife, dirk, razor,
16 stiletto, imitation pistol or other dangerous or deadly
17 instrument or weapon with the intent to use the same
18 against -- unlawfully against another.

19 I already defined the term intent to you.
20 Possess means to have physical possession or otherwise
21 to exercise dominion or control over tangible property.

22 Knowingly. Knowingly means when that person
23 is aware that he or she is in possession of such
24 property.

25 In order for you to find the defendant guilty

1 of this crime, the People are required to prove from
2 all of the evidence in the case beyond a reasonable
3 doubt that on or about September 28th, 2010, in the
4 County of Nassau, the defendant, Ulises Bonilla,
5 possessed a knife, that the defendant did so knowingly
6 and the defendant did so with intent to use that knife
7 unlawfully against another party.

8 Therefore, if you find the People have not
9 proven beyond a reasonable doubt any one or more of
10 those elements, you must find the defendant not guilty
11 of the crime of criminal possession of a weapon in the
12 fourth degree as charged in the fifth count. On other
13 hand, if you find the People have proven beyond a
14 reasonable doubt each of those elements, it is equally
15 your duty to find the defendant guilty of the crime of
16 criminal possession of a weapon in the fourth degree as
17 charged in the fifth count.

18 The charge I just gave you on the fifth count
19 is the same charge I would give you under the sixth
20 count except under the sixth count, the instrument
21 involved is allegedly a tire iron or lug wrench.

22 Under the seventh count, the seventh is
23 endangering the welfare of a child. Under our law, a
24 person is guilty of endangering the welfare of a child
25 when that person knowingly acts in a manner unlikely to

1 be injurious to the physical, mental or moral welfare
2 of a child less than 17 years old.

3 Knowingly, a person acts knowingly in a
4 manner likely to be injurious to the physical, mental
5 or moral welfare of a child when that person is aware
6 that he is acting in such a manner. Actual harm to the
7 child need not result.

8 The defendant must act in a manner which is
9 likely to be injurious to the moral welfare of the
10 victim knowing the likelihood of such injury. The age
11 of the victim is not an element of this crime, and it
12 is not defense to this charge that the defendant did
13 not know the age of the child or believed the age of
14 the child more than 17 years of age.

15 In order for you to find the defendant guilty
16 of this particular crime, the People are required to
17 prove from all of the evidence in this case beyond a
18 reasonable doubt each of the following three elements:
19 And you will note, ladies and gentlemen, there is a
20 different time period, that on or about and between
21 June 7th, 2010 and September 7th, 2010, in the County
22 of Nassau, the defendant acted in a manner likely to be
23 injurious to the physical, mental or moral welfare of
24 Jennifer Villatoro, two, the defendant did so
25 knowingly, and Jennifer Villatoro was less than 17

1 years of age.

2 Therefore, if you find that the People have
3 not proven beyond a reasonable doubt any one or more of
4 these elements, you must find the defendant not guilty
5 of the crime of endangering the welfare of a child. On
6 the other hand, if you find the People have proven
7 beyond a reasonable doubt each of the these elements,
8 it is equally your duty find the defendant guilty of
9 the crime of endangering the welfare of a child.

10 And as I said to you before, ladies and
11 gentlemen, I don't expect you to memorize this stuff.
12 If, during the course of your deliberations, you want a
13 repeating or re-explanation of these offenses, I would
14 be glad to give it to you.

15 Okay, People, any further requests, just yes
16 or no?

17 MS. ABDI: No.

18 THE COURT: Defendant, any further requests,
19 yes or no?

20 MR. MILLMAN: Yes.

21 THE COURT: People, any objections,
22 exceptions, yes or no?

23 MS. ABDI: No.

24 THE COURT: Defendant, any objections,
25 exceptions?

Proceedings

1287

1 MR. MILLMAN: No.

2 THE COURT: I'll take these over here.

3 (The following occurs at sidebar outside of
4 the hearing of the jurors.)

5 MR. MILLMAN: I had a request to charge on
6 inconsistent statements. I know you did touch on it,
7 but there was some additional language that I was
8 requesting.

9 THE COURT: I thought I charged on that. As
10 a matter of fact, I know I did.

11 MR. MILLMAN: I don't know if it was -- I
12 mean the one that I had, Judge, had language that I
13 know was not --

14 THE COURT: Let me see it.

15 MR. MILLMAN: Sure. Both that and what's on
16 the bottom as well.

17 THE COURT: All right, I charged them this.
18 If you want an expanded charge on inconsistent
19 statements --

20 MR. MILLMAN: The other thing, Judge, this
21 was not the motive part but the benefit and interest.
22 I think you may have touched on that.

23 THE COURT: I did those.

24 MR. MILLMAN: But the benefit, I don't know
25 if you did that, that you could consider whether a

Proceedings

1288

1 witness hopes or receives a benefit. You know who that
2 would refer to.

3 THE COURT: No, I don't. Who would that be?
4 No, I don't.

5 MS. ABDI: He is talking about Misael
6 Berrios.

7 MR. MILLMAN: Misael Berrios, the benefit
8 that he was offered, expects to receive a benefit for
9 testifying.

10 THE COURT: All right, I will charge that.

11 MR. MILLMAN: Also that you can consider
12 whether a witness had been convicted of a crime.

13 THE COURT: I did that.

14 MR. MILLMAN: I'm sorry, Judge. Judge, I
15 apologize, last one, it's just this one paragraph
16 standard charge. I don't think that was part of it.
17 It was just that paragraph.

18 THE COURT: Okay, I will charge it.

19 (The following takes place in open court.)

20 THE COURT: Okay, ladies and gentlemen, I
21 gave you a number of factors which you could assess in
22 determining a witness's credibility and said at that
23 particular time the list was not inclusive. Another
24 thing you can consider in assessing a witness's
25 credibility is whether or not that witness hopes for or

1 expects to receive a benefit for testifying. If so,
2 you may consider whether and to what extent it affected
3 the truthfulness of the witness's testimony. Ladies
4 and gentlemen, this has specific reference to -- you
5 have to give me the name.

6 MR. MILLMAN: Mr. Berrios, Mr. Misael
7 Berrios.

8 THE COURT: Yes, in receiving the immunity
9 that he received for his testimony.

10 Okay, I gave you how an inconsistent
11 statement can be used to affect a witness's
12 credibility. I thought I made it clear a number of
13 times, but I'm going to sacrifice redundancy for the
14 sake of clarity and read you the following: You may
15 consider whether a witness made statements at this
16 trial that are inconsistent with each other. You may
17 also consider whether a witness made previous
18 statements that are inconsistent with his or her
19 testimony at trial. You may consider whether a witness
20 testified to a fact here at trial that a witness
21 omitted to state at a prior time when it would have
22 been reasonable and logical for a witness to have
23 stated the fact.

24 In determining whether it would have been
25 reasonable and logical for a witness to have stated the

1 omitted fact, you may consider whether the witness's
2 attention was called to the matter and whether the
3 witness was specifically asked about it. If a witness
4 has made inconsistent statements or omissions, you may
5 consider whether and to what extent they affect the
6 truthfulness or accuracy of the witness's testimony
7 here at trial. The contents of the prior inconsistent
8 statements are not proof of what happened. You may use
9 the evidence of a prior inconsistent statement only to
10 evaluate the truthfulness or accuracy of the witness's
11 testimony here at trial.

12 Very, very simply put, I told you this once
13 before, if a witness testifies the house was red, did
14 you testify the previous occasion the house was green
15 and the witness says yes, that's not proof the house
16 was green. It only affects whether or not the witness
17 is telling the truth as to whether or not the house was
18 red.

19 Lastly, I gave you a charge on proof beyond a
20 reasonable doubt. I may expand that now a little, but
21 you have to follow this also. The law uses the term
22 proof beyond a reasonable doubt to tell you how
23 convincing the evidence of guilt must be to permit a
24 verdict of guilty. The law recognizes that in dealing
25 with human affairs, there are very few things in this

1 world we know with absolute certainty. Therefore, the
2 law does not require the People to prove the defendant
3 guilty beyond all possible doubt. On the other hand,
4 it not sufficient to prove the defendant -- that the
5 defendant is probably guilty. In a criminal case, the
6 proof of guilt must be stronger than that. It must be
7 beyond a reasonable doubt.

8 As I previously charged you, your verdict
9 must be unanimous. That is, all 12 of the deliberating
10 jurors must agree on the verdict on each count.

11 Miss Woessner, since you are the first juror
12 sworn, you are designated the foreperson of this
13 particular jury. It's your duty of seeing that your
14 deliberations are conducted in an orderly fashion and
15 to report to the Court your questions, requests and
16 final determination.

17 It is your duty as jurors to consult with one
18 another and to deliberate with a view of reaching an
19 agreement if you can do so without violence to your
20 individual judgment. Each of you must decide the case
21 for yourself but must do so only after impartially
22 considering the evidence along with your fellow jurors.

23 In the course of your deliberations, do not
24 hesitate to reexamine your own views and change your
25 opinion if you're honestly convinced that it is

1 erroneous. Simply put, my mind is made up, don't let
2 me know what the facts are. I will repeat this: Do
3 not hesitate to reexamine your own views and change
4 your opinion if you are honestly convinced it is
5 erroneous, but do not surrender your honest conviction
6 as to the weight or the effect of the evidence solely
7 because of the opinions of your fellow jurors or for
8 the mere purpose of returning a verdict.

9 There is no fixed procedure for you to follow
10 in your deliberations. However, you should proceed in
11 such a way that each juror has an equal opportunity to
12 express his or her own views.

13 Your attitude at the outset of deliberations
14 is important. It is seldom helpful for a juror upon
15 entering the jury room to announce an emphatic opinion
16 on the case or to a determination to stand for a
17 certain verdict. When a juror does that, individual
18 pride may become involved, and the juror may later
19 hesitate to recede from an announced position.

20 The case is important. It is important to
21 the defendant. It is important to the People, and it
22 is important that justice be done.

23 Make sure your verdict is free from passion,
24 prejudice, sympathy or other -- any other improper
25 motive.

1 Again, you must not during the course of your
2 deliberations converse among yourselves or with anyone
3 else upon any subject connected with this trial.

4 You must not read or listen to any account or
5 discussion of the case in the event it is reported by
6 the newspapers.

7 You must not visit or view the premises or
8 place where the offenses charged were committed or any
9 other premise or place connected with this case.

10 Prior to your being discharged, you must not
11 request, agree to accept or discuss with any person the
12 receiving or accepting of any payment in consideration
13 for supplying any information.

14 You must promptly report to the Court any
15 incidents within your knowledge involving an attempt by
16 any person improperly to influence you.

17 Don't access the internet or World Wide Web.

18 Members of the jury, I'm now going to give
19 you a verdict sheet, and you can retire for your
20 deliberations.

21 One further thing. The deliberations that
22 you are going to be engaged in must happen with 12 of
23 the jurors present. To give you an example, let's just
24 say you don't reach your verdict immediately and you go
25 home and there are two sides to an issue. And in the

Proceedings

1294

1 interest of efficiency, one juror calls another juror
2 in the nighttime and says, you know, maybe we can work
3 this out between ourselves so we can save time
4 tomorrow. That might be proper in a business meeting.
5 It might even be efficient. But if you do that, you're
6 in my contempt, and I don't want you to do that. You
7 can retire to deliberate.

8 (Whereupon, the jury exits the courtroom.)

9 (Whereupon, the jury deliberates.)

10 THE COURT: May I have a stipulation between
11 parties that if they want any evidence, it can go in
12 without the parties coming back?

13 MS. ABDI: Yes.

14 MR. MILLMAN: Yes, your Honor.

15 (Whereupon, a recess was taken during
16 deliberations.)

17 COURT OFFICER: Jury entering.

18 (The jury enters the courtroom.)

19 THE COURT: We just have to wait for the
20 interpreter. It will only be a moment.

21 THE CLERK: Recalling case on trial, People
22 of the State of New York versus Ulises Bonilla,
23 Indictment 202N of 2011. All parties present including
24 the defendant, Spanish interpreter and all jurors. Do
25 both sides waive a reading of the roll and consent to

Proceedings

1295

1 the seating of the jury?

2 MS. ABDI: Yes.

3 MR. MILLMAN: Yes.

4 THE CLERK: Thank you.

5 THE COURT: All right, ladies and gentlemen,
6 you have had an awful lot today. You've had two
7 summations, my charge and an hour and ten minutes worth
8 of deliberations. I'm going to break for the day.

9 You've experienced the summations. You've
10 experienced the charge, and you also experienced the
11 deliberations. That's a lot. So we'll break until
12 Monday.

13 As I said to you before, we all have to be
14 here together to have anything go on in the courtroom.
15 However, if you are here on Monday at 9 o'clock, you
16 can start deliberating, and that would give you some
17 more time in deliberations. So I'm going to ask you to
18 be here at 9 o'clock, and as soon as we get the 12, you
19 can start deliberations without coming back into court.

20 As far as the alternates are concerned, you
21 have to appear back here on Monday. I may have some
22 different news for you on Monday. I know it's very,
23 very difficult to be here and not deliberate. So if
24 you want to bring something to amuse yourself, do it, a
25 book, a crossword puzzle, a TV, anything like that,

Proceedings

1296

1 just do it. But there's nothing I can do at this
2 particular time.

3 So remember all of the admonitions I have
4 given you. We'll see you -- especially the one about
5 the 52 year old principal, and we'll see you all here
6 on Monday at 9 o'clock.

7 (Whereupon, the jury exits the courtroom.)

8 THE COURT: Okay, have a pleasant weekend.

9 MS. ABDI: Thank you, your Honor.

10 MR. MILLMAN: Thank you, your Honor.

11 (Whereupon, the trial is adjourned to
12 December 19th, 2011.)
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1 STATE OF NEW YORK : NASSAU COUNTY

2 SUPREME COURT : PART 39

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

Ind. No. 202N-11

6 ULISES BONILLA,

7 Defendant.

8 -----X

9 JURY TRIAL

10 December 19, 2011
11 262 Old Country Road
12 Mineola, New York

12 B E F O R E :

13 HON. GEORGE R. PECK,
14 Acting Supreme Court Justice

15
16 A P P E A R A N C E S :

17 HON. KATHLEEN M. RICE
18 Nassau County District Attorney
19 BY: ZEENA ABDI, ESQ., of Counsel
20 Assistant District Attorney
21 For the People

22 DANIEL L. MILLMAN, ESQ.
23 316A Main Street
24 Roslyn, New York 11576
25 For the Defendant

JOANNE HORROCKS, CSR
Senior Court Reporter

Proceedings

1298

1 THE CLERK: Case on trial, Indictment 202N of
2 2011, People of the State of New York versus Ulises
3 Bonilla. Let the record reflect all parties are
4 present, including the defendant and the Spanish
5 interpreter. There are no jurors present.

6 THE COURT: All right, counsel, we have two
7 notes. One is marked Exhibit 7, Court Exhibit 7. The
8 other is marked Court Exhibit 8.

9 Court Exhibit 7 says, We, the jury, would
10 like the definition of reasonable doubt, Oscar's
11 timeline of events on Friday, September 24th,
12 definitions of charges, medical records of Ulises in
13 hospital on 9-28.

14 And then on number 8 says, We, the jury, it
15 says photo of the blood spatter on the car, photos
16 three of stab wounds and Armando. Well, obviously,
17 have you agreed concerning the photo of the blood
18 spatter on the car?

19 MS. ABDI: Yes, your Honor.

20 MR. MILLMAN: Yes, we have.

21 THE COURT: Then that will be done. And we
22 will give them the photographs of the wounds on
23 Armando. With regard to Number 7, Court Exhibit 7, We
24 would like the definition of reasonable doubt. I'm
25 just going to reread what I read to my main charge with

Proceedings

1299

1 your addition, counsel.

2 Then it says, Oscar's timeline of the events
3 on September 24th. I spoke with counsel off the record
4 on this subject, and am I correct in saying that
5 because Oscar was a short witness, we should just
6 reread his entire testimony, People?

7 MS. ABDI: Yes.

8 MR. MILLMAN: Yes, your Honor.

9 THE COURT: I think that's wise. Think it
10 would create more problems culling the testimony than
11 just rereading the testimony.

12 And then it says, Definitions of charges.
13 What I intend to do here, without objection, is simply
14 read the charges in the indictment, say that the
15 indictment is not evidence and then back up the charge
16 in the indictment with the statute defining the
17 offense. People?

18 MS. ABDI: That's fine, Judge.

19 THE COURT: Defendant?

20 MR. MILLMAN: Yes, your Honor.

21 THE COURT: Okay. And then it says, The
22 hospital records. We will just give them to them.
23 Okay, let's bring in the jury.

24 Do I have counsel's consent to have the clerk
25 tell the officers excuse the jury at a quarter to 1 and

Proceedings

1300

1 order them to return at 2 o'clock if they haven't
2 reached a verdict? I don't like the way we do things
3 today. We know longer buy lunches for the jury because
4 of budgetary means. But that's my instructions from
5 the higher administration. So I either bring them in
6 and excuse them or have the court officers excuse them.
7 People?

8 MS. ABDI: Judge, I would rather bring them
9 in before excusing so they can be admonished that they
10 are not supposed to --

11 THE COURT: I can admonish them right now. I
12 can admonish them right now. But if you want me to
13 bring them in, I'll bring them in. I can admonish them
14 before they leave on this instruction. Defendant?

15 MR. MILLMAN: Just one quick moment. I have
16 no position on it, your Honor.

17 THE COURT: People?

18 MS. ABDI: Judge, I just rather they be
19 brought in before they are excused for lunch.

20 THE COURT: All right, she wants them brought
21 in, and I will exceed to that.

22 COURT OFFICER: Jury entering.

23 (The jury enters the courtroom.)

24 THE CLERK: Let the record reflect the
25 presence of all jurors. Do both sides waive a reading

Proceedings

1301

1 of the roll and consent to the seating?

2 MS. ABDI: Yes.

3 MR. MILLMAN: Yes.

4 THE COURT: Okay, I have your two original
5 notes, and I'm prepared to handle them at this
6 particular time.

7 Your last note that you gave me literally
8 about a minute or ago so reads as follows: Nancy's
9 testimony regarding tire iron. I'm not at this
10 particular time prepared to do anything with regard to
11 that. That has to be discussed with counsel.

12 All right, We, the jury, would like the
13 definition of reasonable doubt. I will reread my
14 definition of reasonable doubt.

15 Oscar's timeline of the events on
16 September -- on Friday, September 24th. I discussed
17 this with counsel, and the testimony of Oscar was
18 brief. Therefore, rather than going through the record
19 and cull out that which pertains temporally to your
20 question, we are just going to reread his entire
21 testimony.

22 Definition of charges. I will read that to
23 you.

24 Medical records will be provided for you.

25 The blood spatter on the car will be provided

1 to you, and the photographs of the deceased's stab
2 wounds will be provided for you.

3 Reasonable doubt. The standard of proof
4 required in every criminal case is proof of guilt
5 beyond a reasonable doubt. That does not require the
6 People to prove the defendant guilty beyond all
7 possibility of doubt or beyond a shadow of a doubt. It
8 requires the People to establish the defendant's guilt
9 only beyond a reasonable doubt.

10 Therefore, before you may convict the
11 defendant, each of you must be satisfied that the
12 credible evidence is sufficient to convince you beyond
13 a reasonable doubt that the defendant is, in fact,
14 guilty and that the defendant is, in fact, the person
15 who committed the crime or crimes charged.

16 A doubt of the defendant's guilt to be a
17 reasonable doubt must be a doubt for which some reason
18 can be given. The doubt to be reasonable must,
19 therefore, arise from the nature and quality of the
20 evidence in the case or from the lack or insufficiency
21 of the evidence in the case. The doubt to be a
22 reasonable doubt should be one that a reasonable
23 person, acting a matter of this importance, would be
24 likely to entertain because of the evidence or because
25 of the lack or insufficiency of the evidence in the

1 case.

2 A reasonable doubt, our law says, is an
3 actual doubt, one which you are conscious of having in
4 your mind after you have considered all the evidence in
5 the case or lack of evidence in the case. If, after
6 doing so, you then feel uncertain and not fully
7 convinced of the defendant's guilt and you are also
8 satisfied that in entertaining such a doubt you are
9 acting as a reasonable person should act in a matter of
10 this importance, then that is a reasonable doubt of
11 which the defendant is entitled to the benefit.

12 Therefore, the first duty of the jury is to
13 consider and weigh all the evidence in the case and
14 decide which evidence you believe is credible and
15 worthy of your consideration. The next duty of each
16 juror is to determine whether he or she has, in fact, a
17 reasonable doubt of the defendant's guilt as I have
18 defined that term for you.

19 If, in doing so, you find the People have not
20 proven the defendant's guilt beyond a reasonable doubt,
21 you must find the defendant not guilty. On the other
22 hand, if you are satisfied that the People have proven
23 the defendant's guilt beyond a reasonable doubt, it is
24 equally your duty to find the defendant guilty.

25 And then I gave you a supplemental charge on

1 reasonable doubt. The law uses the term proof beyond a
2 reasonable doubt to tell you how convincing the
3 evidence of guilt must be to permit a verdict of
4 guilty. The law recognizes that in dealing with human
5 affairs, there are very few things in this world that
6 we know with absolute certainty. Therefore, the law
7 does not require the People to prove a defendant's
8 guilt beyond all possible doubt. On the other hand,
9 it's not sufficient to prove that the defendant is
10 probably guilty. In a criminal case, proof of guilt
11 must be stronger than that. It must be beyond a
12 reasonable doubt.

13 A reasonable doubt is an honest doubt of the
14 defendant's guilt for which a reason exists based upon
15 the nature and quality of the evidence. It is an
16 actual doubt, not an imaginary doubt. It is a doubt
17 that a reasonable person acting in a matter of this
18 importance would be likely to entertain because of the
19 evidence that was presented or because of the lack of
20 convincing evidence.

21 Proof of guilt beyond a reasonable doubt is
22 proof that leaves you so firmly convinced of the
23 defendant's guilt that you have no reasonable doubt as
24 to the existence of any element of the crime or of the
25 defendant's identity as to the person who committed the

1 crime.

2 Now, can you read Oscar's testimony.

3 (The requested portion was read.)

4 THE COURT: I'm now going to answer that part
5 of the note indicating the definition of charges, but I
6 do want to give you a little instruction. If you want
7 the definition of reasonable doubt reread, if you want
8 Oscar's testimony reread, and if you want the charges
9 reread again, don't be hesitant to ask for them. I
10 don't want you to go back into that jury room and say,
11 We've already asked him once, how can we ask him again.
12 Disabuse yourself of that. It's our job to make you
13 understand. If you don't understand, it's not that
14 you're not doing your job, I'm not doing mine.

15 Now, I'm going to read the allegations
16 contained in the counts of the indictment, and then I'm
17 going to read the statute that has reference to that
18 particular indictment. That's what you asked for, and
19 that's what I'm going to do. Bear in mind, an
20 indictment is not evidence.

21 Count one, the grand jury of the County of
22 Nassau by this indictment accuses the defendant of the
23 crime of murder in the second degree in violation of
24 Section 125.25 Subdivision 1 of the Penal Law of the
25 State of New York committed as follows: The defendant,

1 Ulises Bonilla, on or about the 28th day of September,
2 2010, in the County of Nassau, State of New York, with
3 intent to cause the death of Armando Villatoro, did
4 cause the death of Armando Villatoro.

5 Section 125.25 Subdivision 1 of the Penal Law
6 states a person is guilty of murder in the second
7 degree when, with intent to cause the death of another
8 point, he causes the death of such person or of a third
9 person. It's a very simple statute. You have the
10 intent to kill, and you kill.

11 I've already given you expanded definitions
12 of intent. You didn't ask for it under this particular
13 note. I'm not going to give it to you. However, if
14 you want them, just give me a supplementary note, and I
15 will.

16 Under the first count of the indictment, I
17 gave you a lesser included charge to consider of
18 manslaughter in the first degree if you find the
19 defendant not guilty of murder in the second.
20 Manslaughter in the first degree, 125.20 Subdivision 1
21 of our Penal Law. A person is guilty of manslaughter
22 in the first degree when, with intent to cause serious
23 physical injury to another person, he causes the death
24 of such person or a third person.

25 So murder in the second degree requires an

1 intent to kill. Manslaughter in the first degree
2 requires an intent to cause serious physical injury.

3 Under the second count of the indictment, And
4 the grand jury of the County of Nassau by this
5 indictment further accuse the defendant of the crime of
6 rape in the first degree in violation of Section 130.35
7 Subdivision 3 of the Penal Law of the State of New York
8 committed as follows: The defendant, Ulises Bonilla,
9 on or about the 24th day of September, 2010, in the
10 County of Nassau, State of New York, did engage in
11 sexual intercourse with a person who was less than 11
12 years old, to wit: The defendant had sexual
13 intercourse with a minor aged 10.

14 Section 130.35 of our Penal Law Subdivision 3
15 states a person is guilty of rape in the first degree
16 when he or she engages in sexual intercourse with
17 another person who is less than 11 years old.

18 The third count, And the grand jury of the
19 County of Nassau by this indictment further accuse the
20 defendant of the crime of sexual abuse in the first
21 degree in violation of Section 130.65 Subdivision 3 of
22 the Penal Law of the State of New York committed as
23 follows: The defendant, Ulises Bonilla, on or about
24 the 24th day of September, 2010, in the County of
25 Nassau, State of New York, did subject another person

Proceedings

1308

1 to sexual conduct, and the other person was less than
2 11 years old, to wit: The defendant touched the sexual
3 or intimate parts of a minor aged 10 with his penis.

4 Section 130.65 Subdivision 3 states a person
5 is guilty of sexual abuse in the first degree when he
6 or she subjects another person to sexual contact and
7 the other person is less than 11 years old.

8 Fourth count, And the grand jury of the
9 County of Nassau by this indictment further accuse the
10 defendant of the crime of sexual abuse in the first
11 degree in violation of Section 130.65 Subdivision 3 of
12 the Penal Law of the State of New York committed as
13 follows: The defendant, Ulises Bonilla, on or about
14 the 24th day of September, 2010, in the County of
15 Nassau, State of New York, subjected another person to
16 sexual contact and the other person was less than 11
17 years old, to wit: The defendant touched the sexual or
18 intimate parts of a minor age 10 with his hands.

19 Again, sexual abuse in the first degree. A
20 person is guilty of sexual abuse in the first degree
21 when he or she subjects another person to sexual
22 contact and the other person is less than 11 years old.
23 There are two methods by which the People are alleging
24 this crime was committed, under the third count, with a
25 penis, with under the fourth count, with hands.

1 Under the fifth count, The grand jury of the
2 County of Nassau by this indictment further accuse the
3 defendant of crime of criminal possession of a weapon
4 in the fourth degree in violation of Section 265.01
5 Subdivision 2 of the Penal Law of the State of New York
6 committed as follows: The defendant, Ulises Bonilla,
7 on or about the 28th day of September, 2010, in the
8 County of Nassau, State of New York, did possess a
9 dagger, dangerous knife, dirk, razor, stiletto,
10 imitation pistol or any other deadly or -- dangerous or
11 deadly instrument or weapon with the intent to use the
12 same unlawfully against another, to wit: A sharp
13 object. And in this case, as I said before, the People
14 allege the sharp object was a knife.

15 Section 265.01 Subdivision 2, a person is
16 guilty of criminal possession in the fourth degree when
17 he possesses any dagger, dangerous knife, dirk, razor,
18 stiletto, imitation pistol or any other dangerous or
19 deadly instrument or weapon with intent to use the same
20 unlawfully against another.

21 The fifth count and the sixth count are the
22 same sections of the criminal law, and apply the fifth
23 count definitions to the sixth count definitions except
24 the allegation in the sixth count is a blunt instrument
25 which the People allege was the tire iron or a lug

1 wrench.

2 The last count, the grand jury of the County
3 of Nassau by this indictment further accuses the
4 defendant of the crime of endangering the welfare of a
5 child in violation of Section 260.10 Subdivision 1 of
6 the Penal Law of the State of New York. The defendant,
7 Ulises Bonilla, between on or about the 27th day of
8 June, 2010 to on or about the 7th day of September,
9 2010, in the County of Nassau, did knowingly act in a
10 manner likely to be injurious to the physical, mental
11 or moral welfare of a child less than 17 years old or
12 directed or authorized such child to engage in an
13 occupation involving a substantial risk of danger to
14 her life or health, to wit: The defendant touched the
15 sexual or intimate parts of a minor aged 10 with his
16 hands.

17 Section 260.10 Subdivision 1 of the New York
18 State Penal Law reads as follows: A person is guilty
19 of engaging -- a person is guilty of endangering the
20 welfare of a child when he knowingly acts in a manner
21 likely to be injurious to the physical, mental or moral
22 welfare of a child less than 17 years of age or directs
23 or authorizes such child to engage in an occupation
24 involving a substantial risk of danger to his life or
25 health.

Proceedings

1311

1 Okay, I have answered the questions you have
2 asked me. If you need anything else answered or
3 clarified, let me know.

4 Now, what we're going to have do now while
5 you go back into the jury room and deliberate, the
6 lawyers and the reporter have to try to attempt your
7 last note to answer it, Nancy's testimony regarding the
8 tire iron. That record may have to be culled out to
9 isolate the area in that specific question. Retire to
10 deliberate.

11 (Whereupon, the jury exists the courtroom.)

12 (Whereupon, the jury deliberates.)

13 THE COURT: Okay, I don't remember too much
14 about the tire iron testimony, so in this particular
15 case, I think it might be best to if you go through the
16 record and cull out that testimony pertaining to a tire
17 iron.

18 MS. ABDI: And I think that that testimony
19 was pretty brief.

20 THE COURT: I remember it to be rather brief,
21 because I wouldn't have asked you the question. Okay.

22 MR. MILLMAN: And judge, that will be the
23 direct and cross because I touched on the cross.

24 THE COURT: Oh, yes, absolutely.

25 (A recess was taken.)

Proceedings

1312

1 THE CLERK: Recalling case on trial, People
2 of the State of New York versus Ulises Bonilla,
3 Indictment Number 202N of 2011. All parties present,
4 including the defendant and Spanish interpreter. There
5 are no jurors present at this time.

6 THE COURT: All right, counsel, I have had a
7 conversation with our reporter. She's located the
8 pertinent parts of Nancy's testimony regarding the tire
9 iron or lug wrench. She is prepared to read it to the
10 jury. Do you want her to read it to you this first, or
11 do you want her just to read it to the jury?

12 MR. MILLMAN: Just one moment. I'm fine with
13 her just reading it.

14 THE COURT: People?

15 MS. ABDI: That's fine.

16 THE COURT: All right, let's bring in the
17 jury.

18 COURT OFFICER: Jury entering.

19 (The jury enters the courtroom.)

20 THE CLERK: Let the record reflect the
21 presence of all jurors. Do both sides consent to the
22 seating of the jurors, waive a reading of the roll?

23 MS. ABDI: Yes.

24 MR. MILLMAN: Yes.

25 THE COURT: Ladies and gentlemen, with

Proceedings

1313

1 consent of counsel, we thought it would be better with
2 regard to this particular note of yours to cull the
3 record and advise you as to what parts of the testimony
4 of Nancy Villatoro had to do with a tire iron or lug
5 wrench, and she's about to give you this testimony.

6 (The requested portion was read.)

7 THE COURT: Okay, resume your deliberations,
8 ladies and gentlemen. Mr. Molczan, just stay here for
9 a second.

10 (Whereupon, the jury exits the courtroom.)

11 THE COURT: Mr. Molczan, I'm informed by our
12 court officers you had a tragedy.

13 A JUROR: Yeah. A good friend of mine passed
14 away this weekend, and the funeral is going to be this
15 Wednesday.

16 THE COURT: You are alternate number four,
17 and with consent of counsel, at your request, we will
18 excuse you now.

19 A JUROR: Finish the case?

20 THE COURT: Yes. Is that acceptable.

21 A JUROR: Yeah, that's fine, your Honor.

22 THE COURT: Is that acceptable?

23 MR. MILLMAN: Yes.

24 MS. ABDI: Yes.

25 THE COURT: Thank you for your service.

Proceedings

1314

1 A JUROR: All right, thank you very much,
2 your Honor.

3 (The juror was excused.)

4 (Whereupon, the jury deliberates.)

5 (A recess was taken.)

6 COURT OFFICER: Jury entering.

7 (The jury enters the courtroom.)

8 THE CLERK: Case on trial recall, all parties
9 present including the Spanish interpreter and the
10 jurors. Both sides waive a reading of the roll and
11 consent to the seating of the jury?

12 MS. ABDI: Yes.

13 MR. MILLMAN: Yes.

14 THE CLERK: Thank you.

15 THE COURT: All right, ladies and gentlemen,
16 I'm going to at this particular time break for lunch.

17 During the lunch our recess, you are not to
18 discuss this case among yourselves. You are only to
19 discuss this case when the 12 jurors are present. And
20 as with my instruction this morning, at 2 o'clock you
21 come back, and as soon as all 12 of you are here, you
22 can start deliberating. You do not have to come back
23 to the courtroom.

24 Now, I don't know when it was, but it was
25 about a year or so ago that because of budgetary

Proceedings

1315

1 restrictions, the office of court administration cut
2 out jurors' lunches. We used to have that last year.
3 I wish we had it this year, but we don't. So you are
4 going to have to brown bag it. We'll see you at 2
5 o'clock.

6 (Whereupon, the jury exits the courtroom.)

7 THE COURT: Have a nice lunch.

8 (Whereupon, a luncheon recess was taken.)
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1 A F T E R N O O N S E S S I O N

2 THE CLERK: Recalling case on trial,
3 Indictment 202N of 2011, People of the State of New
4 York versus Ulises Bonilla. All parties present,
5 including the defendant and Spanish interpreter. There
6 are no jurors present at this time.

7 THE COURT: Okay, counsel, we have a note.
8 It's been introduced as People's Exhibit 10. It says,
9 We, the jury, want definitions of rape charge,
10 parentheses, count two, end parentheses, Angel's
11 testimony regarding the tire iron, and it says, Define
12 intention and circumstantial.

13 What I intend to do is reread my charge
14 concerning count number two. The reporter has culled
15 the testimony of Angel, and she indicates that there is
16 no testimony regarding the tire iron, a tire iron.
17 Consequently, I'm going to tell them exactly that,
18 there is no testimony concerning a tire iron emanating
19 from Angel. Does anyone disagree on that?

20 MS. ABDI: No.

21 MR. MILLMAN: No.

22 THE COURT: And then it says, Define
23 intentionally, circumstantial, and basically I'll go
24 over the same things that I have testified before, that
25 I ruled before. Anyone else have any suggestions?

Proceedings

1317

1 MS. ABDI: No.

2 MR. MILLMAN: No, your Honor.

3 THE COURT: Okay, let's bring in the jury.

4 COURT OFFICER: Jury entering.

5 (The jury enters the courtroom.)

6 THE CLERK: Let the record reflect the
7 presence of all jurors. Do both sides waive a reading
8 of the roll, consent to the seating?

9 MS. ABDI: Yes.

10 MR. MILLMAN: Yes.

11 THE CLERK: Thank you.

12 THE COURT: All right, ladies and gentlemen,
13 I received your note which was marked Court's Exhibit 8
14 and discussed it with counsel. It says, We, the jury,
15 want definitions of rape charge, count two. I will
16 give you that in substantially the same form as I gave
17 it to you before. Then it says, Angel's testimony
18 regarding the tire iron. The reporter culled through
19 Angel's testimony, and there is no reference in his
20 testimony concerning a tire iron. That was consented
21 to and stipulated to by counsel. So we can't read
22 anything back to you that's not in the record. Just
23 one second. If you wish any further clarification, you
24 have to do it by note. I cannot engage in colloquy
25 with you at this particular time because it just messes

Proceedings

1318

1 up the works. If you need a clarification, just give
2 me another note, and we will do it. But none of
3 Angel's testimony will be read back to you, because you
4 limited it to a tire iron, and there is no reference to
5 tire irons.

6 And then says, Define intentional and
7 circumstantial. I'll do that.

8 Now, the second count is rape in the first
9 degree. The indictment alleges -- again, the
10 indictment is not evidence, The grand jury of the
11 County of Nassau by this indictment further accuse the
12 defendant of the crime of rape in the first degree in
13 violation of Section 130.35 Subdivision 3 of the Penal
14 Law committed as follows: The defendant, Ulises
15 Bonilla, on or about the 24th day of September, 2010,
16 in the County of Nassau, did engage in sexual
17 intercourse with a person who is less than 11 years
18 old, to wit, the defendant had sexual intercourse with
19 a minor age 10, and in this case, it's Jennifer
20 Villatoro.

21 Okay, under our law, a person is guilty of
22 rape in the first degree when he engages in sexual
23 intercourse with another person who is less than 11
24 years old. Under our law, it is also an element of
25 this offense that the sexual intercourse was committed

1 without the consent of the other person. Sexual
2 intercourse takes place without a person's consent when
3 that person is deemed by law to be incapable of
4 consent. Under our law, a person is deemed incapable
5 of consenting to sexual intercourse when she is less
6 than 11 years old. Thus, sexual intercourse with such
7 a person is always deemed to be without that person's
8 consent even if, in fact, the person did consent.

9 It is not a defense to this charge that the
10 actor did not know that the person with whom the actor
11 had sexual intercourse was 11 years old or less -- was
12 less than 11 years old or that the actor believed that
13 such person was 11 years old or more on the date of the
14 offense.

15 The term sexual intercourse used in this
16 definition of the crime has its own meaning, and I will
17 define that to you. Sexual intercourse means any
18 penetration, however slight, of the penis into the
19 vaginal opening. In other words, any penetration of
20 the penis into the vaginal opening regardless of the
21 distance of penetration constitutes an act of sexual
22 intercourse. Sexual intercourse does not necessarily
23 require erection of the penis, emission or orgasm.

24 Therefore, in order for you to find the
25 defendant guilty of this crime, the People are required

1 to prove from all of the evidence in the case beyond a
2 reasonable doubt both of the following two elements:
3 That on or about September 24th, 2010, in the County of
4 Nassau, the defendant, Ulises Bonilla, engaged in
5 sexual intercourse with Jennifer Villatoro and Jennifer
6 Villatoro was less than 11 years old. Therefore, if
7 you find the People have not proven beyond a reasonable
8 doubt either one or both of these elements, you must
9 find the defendant not guilty of the crime of rape in
10 the first degree as charged in the second count. On
11 the other hand, if you find that the People have proven
12 beyond a reasonable doubt both of those elements, it is
13 equally your duty to find the defendant guilty of the
14 crime of rape in the first degree as charged in the
15 second count.

16 Define intentional and circumstantial
17 evidence. Section 15.05 of the Penal Law states
18 culpability, definitions of culpable mental states,
19 Subdivision 1, intentionally. A person acts
20 intentionally with respect to a result or to conduct
21 described by a statute defining an offense when his
22 conscious objective is to cause such result or to
23 engage in such conduct.

24 Conscious objective are the operative words.
25 Intent is different than motive. You didn't ask for

1 motive, but if you want it, I will read it back to you.
2 Simply put, intent is conscious objective. Motive is
3 the reason behind that conscious objective.

4 Intent does not require premeditation. In
5 other words, intent does not require advance planning
6 nor is it necessary that the intent be in a person's
7 mind for any particular period of time. The intent can
8 be formed and need only exist at the very moment the
9 person engaged in the prohibited conduct or acts to
10 cause the prohibited result and not any earlier time.

11 The question naturally arises as to how to
12 determine whether or not a defendant had the intent
13 required for the commission of the crime. To make a
14 determination in this case, you must decide if the
15 required intent can be inferred beyond a reasonable
16 doubt from the proven facts. In doing so, you may
17 consider the person's conduct and all of the
18 circumstances surrounding the conduct, including but
19 not limited to the following: What, if anything, did
20 the person say or do at or about the time of the
21 conduct, what result, if any, followed the person's
22 conduct, and was the result a natural necessary,
23 logical and probable consequence of that conduct, and
24 whether or not there was a presence or absence of
25 motive.

1 Therefore, in this case from the facts if you
2 find to have been proven you decide whether or not you
3 can infer beyond a reasonable doubt that the defendant
4 had the intent required for the commission of the
5 crime.

6 Okay, let me give you an example which you
7 can accept or reject. I'm sitting here giving you an
8 instruction, and I'm waiving my hands to add emphasis
9 to the instruction. And while I'm doing this, my hand
10 comes in contact with Charlie Elmore's nose. Now, in
11 that particular case, do you infer that I had the
12 intent to punch Charlie Elmore in the nose?

13 However, if during the course of that
14 explanation, I stop, grimace my teeth, make a fist,
15 raise it and come down hard on his nose, you might
16 infer from that particular conduct that I had a
17 different intent. There's nothing mysterious about it.
18 You can forget what you learned in psychology one.
19 It's a conscious objective.

20 Okay, now, circumstantial evidence. There
21 are two types of evidence, direct evidence and
22 circumstantial evidence. Evidence is direct when a
23 witness testifies to a fact from his own knowledge or
24 of a fact through one of his five senses. That is
25 sight, sound, smell, taste, touch. If you wanted to

1 know that someone was served scotch whisky and the
2 person was under 21, you could have the police officer
3 testify that he observed a bartender pour some whisky
4 out of a Johnny Walker bottle, and that's
5 circumstantial evidence of the liquor that it came from
6 a liquor bottle. And the direct evidence could be that
7 the officer tasted it, and he knows what scotch whisky
8 tasted like, and that's proof of that particular
9 element directly through the senses. And to show that
10 person was 21 or less at the time, you could do that by
11 things that are either circumstantial or direct.
12 Circumstantial would mean a birth certificate, perhaps,
13 and direct would be testimony of the person's
14 biological mother.

15 Now, circumstantial evidence is evidence of
16 facts which are inferred, deduced or otherwise flow
17 from the other evidence. There is no distinction
18 between the value or weight of the direct and
19 circumstantial evidence. And I think I gave you an
20 example that a fingerprint is circumstantial evidence,
21 but testimony from a half-blind individual is direct
22 evidence. Then I gave you the example of Colonel
23 Sanders and the Kentucky Fried Chicken wherein if you
24 actually rode with Colonel Sanders on the train and
25 spoke to him and saw him on the train, you could show

1 by direct evidence that Colonel Sanders was on the
2 train through your senses of sound and sight. But if
3 you went past the colonel on the platform, went into
4 your own car, took the train to Massapequa Park, got
5 off the train, went into your car, and as you were
6 getting into your car, you saw the colonel getting into
7 his car, what is the only natural and logical deduction
8 you can make from those proven facts by direct
9 evidence? That the colonel took the train. That's a
10 reasonable inference even though you didn't see him get
11 on the train, you didn't see him on the train and you
12 didn't see him get off the train. You are to deduce
13 reasonable inferences from circumstantial evidence, not
14 possible inferences from circumstantial evidence.

15 And then I gave you the example of the
16 colonel after you passed him on the platform, had a
17 change of mind, went back to his office and got some
18 paperwork and then took a taxi from midtown Manhattan
19 to Massapequa Park. Now, is that possible? I guess
20 it's possible, traffic conditions permitting. But is
21 it reasonable? And then I said you have to draw
22 reasonable inferences from the circumstantial evidence.

23 And then I said once a fact is deduced by
24 circumstantial evidence, you cannot make a further
25 inference, which is called an inference on an

1 inference. In other words, you could show by means of
2 circumstantial evidence that the colonel took the
3 train, but you could not jump and make a further
4 inference that he had a window seat or an aisle seat or
5 even if he had a seat at all.

6 And then I gave you an example to clarify the
7 fact that a fact can be proven through circumstantial
8 evidence, not necessarily through one witness, but
9 through the testimony of many witnesses testifying as
10 to facts. And although one fact may not prove a
11 situation, they collectively when they all are looked
12 at together are of such weight and persuasiveness as to
13 allow a fact to be proven by circumstantial evidence.

14 I hope I've clarified it for you. Resume
15 deliberations.

16 (Whereupon, the jury exits the courtroom.)

17 (Whereupon, the jury deliberates.)

18 (A recess was taken.)

19 COURT OFFICER: Jury entering.

20 (The jury enters the courtroom.)

21 THE CLERK: Recalling case on trial,
22 Indictment 202N of 2011, People of the State of New
23 York versus Ulises Bonilla. All parties present
24 including the defendant and Spanish interpreter and all
25 jurors. Do both sides waive a reading of the roll and

Proceedings

1326

1 consent to the seating of the jury?

2 MS. ABDI: Yes.

3 MR. MILLMAN: Yes.

4 THE CLERK: Thank you.

5 THE COURT: All right, ladies and gentlemen,
6 it is my judgment that you've deliberated long enough
7 today, and I'm going to excuse you until tomorrow
8 morning at 9 o'clock. This is your first full day of
9 deliberations. It must have been an experience for
10 you.

11 I don't know what you're going to do when you
12 are home, but I'm having to have a very, very dry
13 Tanqueray martini. We'll see you tomorrow. Remember
14 the admonitions I have given you.

15 (Whereupon, the jury exits the courtroom.)

16 THE COURT: See you tomorrow, people.

17 (Whereupon, the trial is adjourned to
18 December 20th, 2011.)
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24
25

1 STATE OF NEW YORK : NASSAU COUNTY

2 SUPREME COURT : PART 39

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

Ind. No. 202N-11

6 ULISES BONILLA,

7 Defendant.

8 -----X

9 JURY TRIAL

10 December 20, 2011
11 262 Old Country Road
12 Mineola, New York

13 B E F O R E :

14 HON. GEORGE R. PECK,
15 Acting Supreme Court Justice

16 A P P E A R A N C E S :

17 HON. KATHLEEN M. RICE
18 Nassau County District Attorney
19 BY: ZEENA ABDI, ESQ., of Counsel
20 Assistant District Attorney
21 For the People

22 DANIEL L. MILLMAN, ESQ.
23 316A Main Street
24 Roslyn, New York 11576
25 For the Defendant

JOANNE HORROCKS, CSR
Senior Court Reporter

Proceedings

1328

1 THE CLERK: Case on trial, People of the
2 State of New York versus Ulises Bonilla, Indictment
3 202N of 2011. All parties present including the
4 Spanish interpreter and defendant. There are no jurors
5 present at this time.

6 THE COURT: All right, we have a note that's
7 been marked Court's Exhibit 13. We, the jury, would
8 like to see all pictures in evidence of the crime
9 scene, large map of Kinkel Street. That's been
10 provided to them. Nancy and Jocelyn's testimony in BMW
11 car. That has been gone through by the reporter, and
12 the sides have agreed which part would be read,
13 correct?

14 MS. ABDI: Yes.

15 MR. MILLMAN: Yes, your Honor.

16 THE COURT: Misael's testimony of what Ulises
17 said as they ran down the block. That has been gone
18 through, and the parties have agreed as to that area of
19 testimony?

20 MS. ABDI: Yes.

21 MR. MILLMAN: Yes, your Honor.

22 THE COURT: Let's bring in the jury.

23 COURT OFFICER: Jury entering.

24 (The jury enters the courtroom.)

25 THE CLERK: Let the record reflect the

1 presence of all jurors. Both sides consent to the
2 seating and waive a reading of the roll?

3 MS. ABDI: Yes.

4 MR. MILLMAN: Yes.

5 THE CLERK: Thank you.

6 THE COURT: All right, we have your note.

7 We, the jury, would like to see all pictures in
8 evidence of crime scene, large evidence map of Kinkel
9 Street, Nancy and Jocelyn's testimony in BMW,
10 parentheses, car, end parentheses, Misael's testimony
11 of what Ulises said as they ran down the block.

12 Since you asked for excerpts, ladies and
13 gentlemen, for the last 50 minutes, Joanne has been
14 culling through the record to locate with a degree of
15 precision the actual place and the testimony so that
16 your question could be answered. Sometimes this
17 happens, and I think I explained to you that situation
18 before you left for deliberations. So there was a
19 reason for the delay. That's the reason.

20 Okay, the pictures have been provided to you.
21 The maps have been provided to you. Let's answer the
22 juror's questions.

23 (The requested portion was read.)

24 THE COURT: All right, ladies and gentlemen,
25 you can resume deliberations. Miss Washington, I want

Proceedings

1330

1 to speak to you for a second. She will be rejoining
2 you in a very, very short time. Do not commence any
3 deliberations until all 12 of you are together.

4 (Whereupon, the jury exits the courtroom.)

5 THE COURT: Miss Washington, you gave me a
6 note indicating that either a friend or relative had
7 died?

8 A JUROR: Yes.

9 THE COURT: Who was that?

10 A JUROR: It was a very close friend of my
11 husband's. I've known him 30 years.

12 THE COURT: All right, now, when are the
13 funeral arrangements?

14 A JUROR: It's for Thursday morning.

15 THE COURT: Thursday morning?

16 A JUROR: Yes.

17 THE COURT: You wish to attend?

18 A JUROR: Yes.

19 THE COURT: Now, does it have to be on
20 Thursday morning? Because many times funeral
21 arrangements are in the night, in the afternoon, in the
22 morning.

23 A JUROR: Right, well, they have already made
24 the arrangements.

25 THE COURT: And what do you mean by Thursday

Proceedings

1331

1 morning?

2 A JUROR: Well, the service is scheduled to
3 start at 10.

4 THE COURT: Thank you. You can resume
5 deliberations.

6 A JUROR: Thank you.

7 (Whereupon, the juror exits the courtroom.)

8 (Whereupon, the jury deliberates.)

9 THE COURT: All right, counsel, we have a
10 day-and-a-half left of deliberations before we are
11 faced with this particular problem. But my gut
12 reaction is I don't see how I can deny her to go to the
13 funeral. It was unexpected, and if necessary, we will
14 just continue this thing on Thursday afternoon. But
15 I'll hear more from you at a later time.

16 (A recess was taken.)

17 THE COURT: On the record.

18 THE CLERK: Recalling case on trial, People
19 of the State of New York versus Ulises Bonilla,
20 Indictment 202N of 2011. All parties present including
21 the defendant and Spanish interpreter. There are no
22 jurors present at this time.

23 THE COURT: All right, I have a note. It's
24 to be marked as a court exhibit. We have reached a
25 verdict. Mark it as a court exhibit, and bring in the

Proceedings

1332

1 jury.

2 COURT OFFICER: Jury entering.

3 (The jury enters the courtroom.)

4 THE CLERK: Let the record reflect the
5 presence of all jurors. Do both sides waive a reading
6 of the roll and consent to the seating of the jury?

7 MS. ABDI: Yes.

8 MR. MILLMAN: Yes.

9 THE COURT: All right, we received a note.
10 It's dated 12-20 at 12:36. We, the jury, have reached
11 a verdict. Mr. Elmore, take the verdict.

12 THE CLERK: Will the jury please rise. Madam
13 Foreperson, has the jury reached a verdict?

14 THE FOREPERSON: Yes.

15 THE CLERK: Madam Foreperson, as to count
16 one, murder in the second degree, how do you find the
17 defendant, guilty or not guilty?

18 THE FOREPERSON: Guilty.

19 THE CLERK: As to count two, rape in the
20 first degree, how do you find the defendant, guilty or
21 not guilty?

22 THE FOREPERSON: Guilty.

23 THE CLERK: As to count three, sexual abuse
24 in the first degree, how do you find the defendant,
25 guilty or not guilty?

Proceedings

1333

1 THE FOREPERSON: Guilty.

2 THE CLERK: As to the fourth count, sexual
3 abuse in the first degree, how do you find the
4 defendant, guilty or not guilty?

5 THE FOREPERSON: Guilty.

6 THE CLERK: As to the fifth count, criminal
7 possession of a weapon fourth degree, how do you find
8 the defendant, guilty or not guilty?

9 THE FOREPERSON: Guilty.

10 THE CLERK: As to the sixth count, criminal
11 possession of a weapon in the fourth degree, how do you
12 find the defendant, guilty or not guilty?

13 THE FOREPERSON: Not guilty.

14 THE CLERK: As to the seventh count,
15 endangering the welfare of a child, how do you find the
16 defendant, guilty or not guilty?

17 THE FOREPERSON: Guilty.

18 THE CLERK: Ladies and gentlemen, you heard
19 the verdict as read by the foreperson. As to count
20 one, murder in the second, you find the defendant
21 guilty. As to count two, rape in the first degree, you
22 find the defendant guilty. As to the third count,
23 sexual abuse in the first degree, you find the
24 defendant guilty. As to the fourth count, sexual abuse
25 in the first degree, you find the defendant guilty. As

1 to the fifth count, criminal possession of a weapon in
2 the fourth degree, you find the defendant guilty. As
3 to the sixth count, criminal possession of a weapon in
4 the fourth degree, find the defendant not guilty. As
5 to the seventh count, endangering the welfare of a
6 child, you find the defendant guilty. Is that your
7 verdict as you have it?

8 THE FOREPERSON: Yes.

9 THE COURT: I assume you want this jury
10 polled?

11 MR. MILLMAN: That's correct, your Honor.

12 THE COURT: Poll the jury. Polling the jury
13 is asking for your individual votes, ladies and
14 gentlemen.

15 THE CLERK: Ladies and gentlemen of the jury,
16 I will now ask you individually if that is your
17 verdict. As to count one, murder in the second degree,
18 guilty; count two, rape in the first degree, guilty;
19 third count, sexual abuse in the first degree, guilty;
20 count four, sexual abuse the in first degree, guilty;
21 count five, criminal possession of a weapon in the
22 fourth degree, guilty; and endangering the welfare of a
23 child, count seven, guilty.

24 Juror number one, is that your verdict?

25 THE FOREPERSON: Yes.

Proceedings

1335

1 THE CLERK: Juror number two, is that your
2 verdict?

3 A JUROR: Yes.

4 THE COURT: I can't hear.

5 A JUROR: Yes.

6 THE CLERK: Juror number three, is that your
7 verdict?

8 A JUROR: Yes.

9 THE CLERK: Juror number four, is that your
10 verdict?

11 A JUROR: Yes.

12 THE CLERK: Juror number five, is that your
13 verdict?

14 A JUROR: Yes.

15 THE CLERK: Juror number six, is that your
16 verdict?

17 A JUROR: Yes.

18 THE CLERK: Juror number seven, is that your
19 verdict?

20 A JUROR: Yes.

21 THE CLERK: Juror number eight, is that your
22 verdict?

23 A JUROR: Yes.

24 THE CLERK: Juror number nine, is that your
25 verdict?

Proceedings

1336

1 A JUROR: Yes.

2 THE CLERK: Juror number 10, is that your
3 verdict?

4 A JUROR: Yes.

5 THE CLERK: Juror number 11, is that your
6 verdict?

7 A JUROR: Yes.

8 THE CLERK: Juror number 12, is that your
9 verdict?

10 A JUROR: Yes.

11 THE CLERK: Your Honor, the polling is
12 unanimous.

13 THE COURT: Members of the jury, I would like
14 to thank you for your service, and I would like to say
15 a few words to you in my chambers before you're
16 excused. I'll be about three or four minutes here. I
17 still have some business to attend to here. I'll see
18 you in my chambers.

19 (Whereupon, the jury is excused.)

20 THE COURT: All right, do you want to make
21 motions now, or do you wish reserve them?

22 MR. MILLMAN: I have a motion at this time,
23 your Honor. I have a motion to -- I'm asking the Court
24 to set aside the verdict pursuant to Section 330.30 of
25 the Criminal Procedure Law on the ground that the trial

1 evidence was not legally sufficient to sustain each
2 charge. Not a single witness had actually observed the
3 stabbing, had not observed my client with a knife, no
4 physical evidence connecting my client to the knife or
5 the stabbing.

6 And I would submit that on the rape charge
7 and related counts related to Jennifer Villatoro that
8 the testimony of the witnesses was incredible as a
9 matter of law in light of the significant, not minor,
10 significant inconsistencies and omissions that were
11 brought out. I'm asking that the Court set aside the
12 verdict with regard to all of the counts in which the
13 jury finds my client guilty.

14 THE COURT: People?

15 MS. ABDI: People oppose.

16 THE COURT: Do you want to be any more
17 specific?

18 MS. ABDI: Your Honor, the evidence was
19 legally sufficient on all grounds, and I do believe
20 there's any reason to discern the jury's verdict.

21 THE COURT: The evidence was certainly
22 legally sufficient in my judgment. It certainly
23 established proof of guilt beyond a reasonable doubt,
24 and there is nothing in the record which would
25 implicate in any way that a reversal or a modification

Proceedings

1338

1 of the judgment by an appellate court would be
2 warranted. And consequently, your motion is denied.

3 Counsel, this was a difficult trial for all.
4 I know that. And if you want to re-advance your motion
5 at another time before sentence, you certainly have my
6 permission on notice to the District Attorney.

7 Presentence report ordered. Date for
8 sentence about six weeks. How about February 1st?

9 THE CLERK: That's a little short.

10 THE COURT: How about February 8th?

11 THE CLERK: The week of the 13th.

12 THE COURT: I'm sorry, I'm giving you bad
13 dates. How about February 16th?

14 MR. MILLMAN: Judge, I just want to check.
15 What was the date, Judge?

16 THE COURT: 16th.

17 MR. MILLMAN: Yes.

18 (Continued on the following page.)
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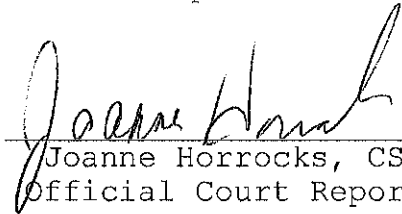
Proceedings

1339

1 THE COURT: February 16th. I did say
2 presentence report ordered. Any bail in existence is
3 exonerated, and the defendant is remanded.

4 * * * * *

5 This is certified to be a true and accurate transcript of my
6 stenographic notes taken in the above-captioned matter.

7 
8 Joanne Horrocks, CSR
9 Official Court Reporter

Index

1340

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
<u>For the People:</u>				
Stevens Destina	431	440		
Alex Alcantara	451	456		
P.O. Christopher Bendetto	465	468		
Angel Leon	471	491		
Susana Villatoro	503	525		
P.O. James Monroe	538	548		
A.M.T. Michael Schwartz	552			
Det. Kenneth Mazzie	560	614		
Det. Patrick Byrne	624	632	633	
Jocelyn Gonzalez	635	651		
Det. Scott McLaughlin	663			
Jennifer Villatoro	669	696		
Dr. Yasmine Pompey	746	756		
Nancy Villatoro	767	783	800	801
Oscar Villatoro	803	818		
Erika Sima	829	885	889	893
Dr. Gerard Catanese	896	910		
Misael Berrios	924	951	995	997
Det James Cereghino	999, 1165	1006		
<u>For the Defendant:</u>				
Feiman Nunez	1047			
Diana Bonilla	1053	1093	1122	

		Index		1341
		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u> <u>Recross</u>
1				
2	<u>For the Defendant cont'd</u>			
3	Zeida Bonilla	1132	1140	1146
4	Evan Grover	1147	1153	1156
5				
6	<u>INDEX TO EXHIBITS</u>			
7				
8			ID	EVD
9	<u>For the People:</u>			
10	1 - Photograph		543	543
11	2 - Map		545	546
12	3 - Memo book entries, 5 pgs.		554	
13	4 - EMS report, 6 pgs.		556	
14	5 - Photograph			560
15	6 - Photograph			560
16	7 - Photograph			560
17	8 - Photograph			560
18	9 - Photograph			560
19	10 - Photograph			560
20	11 - Photograph			560
21	12 - Photograph			560
22	13 - Photograph			560
23	15 - Photograph			560
24	16 - Photograph			560
25	17 - Photograph			560
	18 - Photograph			560

Index

1342

	<u>People's Exhibits Continued</u>	<u>ID</u>	<u>EVD</u>
1			
2	19 - Photograph		560
3	20 - Photograph		560
4	21 - Photograph		560
5	22 - Photograph		560
6	23 - Photograph		560
7	24 - Photograph		560
8	25 - Photograph		560
9	26 - Photograph		560
10	27 - Photograph		560
11	28 - Photograph		560
12	29 - Photograph		560
13	30 - Photograph		560
14	31 - Photograph		560
15	32 - Photograph		560
16	33 - Photograph		560
17	34 - Photograph		560
18	35 - Photograph		560
19	36 - Photograph		560
20	37 - Photograph		560
21	38 - Photograph		560
22	39 - Photograph		560
23	40 - Photograph		560
24	41 - Photograph		560
25	42 - Photograph		560

Index

1343

	<u>People's Exhibits Continued</u>	<u>ID</u>	<u>EVD</u>
1			
2	43 - Photograph		560
3	44 - Photograph		560
4	45 - Photograph		560
5	46 - Photograph		560
6	47 - Photograph		560
7	48 - Photograph		560
8	49 - Photograph		560
9	50 - Photograph		560
10	51 - Photograph		560
11	52 - Photograph		560
12	53 - Photograph		560
13	54 - Photograph		560
14	55 - Photograph		560
15	56 - Photograph		560
16	57 - Crime Scene report, 2 pgs	577	583
17	58 - Sketch	579	581
18	59 - Crime Scene report from car	591	
19	60 - Box containing knife	591	593
20	61 - Bags	600	610
21	62 - Bags	600	613
22	63 - Bags	600	613
23	64 - Envelope	600	613
24	65 - Envelope	600	613
25	66 - Envelope	600	613

	Index		1344
1	<u>People's Exhibits Continued</u>	<u>ID</u>	<u>EVD</u>
2	67 - Envelope	600	613
3	68 - Envelope	600	613
4	69 - Envelope	600	613
5	70 - Envelope	600	613
6	71 - Buccal Swab Kit		
7	72 - N.U.M.C. Records		754
8	73 - DNA Chart		849
9	74 - DNA Chart		849
10	75 - DNA Chart		849
11	76 - Photograph	906	907
12	77 - Photograph	906	907
13	78 - Photograph	906	907
14	79 - Registration Record		1034
15	80 - Birth Certificate		1035
16	<u>Defendant's Exhibits</u>		
17	A - Grand Jury Testimony, 34 pgs.	701	
18	B - Statement, 3 pgs.	717	
19	C - Fingerprint form	741	
20	D - CD	791	797
21	D1 - Redacted CD		1174
22	E - Statement of Oscar Villatoro	826	
23			
24	F - Lab results	1023	
25	G - DVD	1049	1052

Index

1345

1	<u>Defendant's Exhibits cont'd</u>	
2	H - Medical Report for Deft.	1131
3	I - One-page Statement	1149
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		